

TABLE NO. 1

UNLOADS OF AVOCADOS AT LOS ANGELES, SAN FRANCISCO, AND OAKLAND  
BY MONTHS, OCTOBER 1954 - SEPTEMBER 1955 INCLUSIVE

Origin	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Total
Carlot Equivalents: 1/-													
<u>Los Angeles Unloads:</u>													
Rail - none													
Truck													
California													
Local	14	34	52	83	49	77	52	39	43	29	25	60	563
San Diego County	14	26	60	47	112	162	147	129	89	42	37	29	794
S.Barb-SLO	-	-	-	-	-	-	-	-	10	2	33	7	52
Total California	28	60	112	130	161	239	199	168	142	73	95	96	1,509
Florida	-	11	1	-	-	-	-	-	-	-	-	-	12
Grand Total 1954-55	28	71	113	130	161	239	199	168	142	73	95	96	1,521
<u>San Francisco Unloads:</u>													
Rail - none													
Truck													
California													
Wholesale Market													
L.A. Local District	1	5	7	5	4	9	7	5	7	3	12	3	68
San Diego County	7	9	10	17	9	15	11	13	9	10	4	8	122
Farmers' Market													
San Diego County	-	-	-	-	-	1	1	-	-	-	-	-	2
Total California	8	14	17	22	13	25	19	18	16	13	16	11	192
Florida	2	11	-	-	-	-	-	-	-	-	-	-	13
Grand Total 1954-55	10	25	17	22	13	25	19	18	16	13	16	11	205
<u>Oakland Unloads:</u>													
Rail - none													
Truck													
California													
L.A. Local District	1	1	2	4	3	2	6	6	1	3	5	1	35
San Diego County	4	6	12	15	10	23	11	12	16	10	8	10	137

S.Parb-S10									10	2	33	7	52
Total California	28	60	118	130	161	239	199	168	142	73	95	96	1,509
Florida	-	11	1	-	-	-	-	-	-	-	-	-	12
Grand Total 1954-55	28	71	119	130	161	239	199	168	142	73	95	96	1,521

San Francisco Unloads:

Rail - none

Truck

California

Wholesale Market

L.A. Local District	1	5	7	5	4	9	7	5	7	3	12	3	68
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San Diego County	7	9	10	17	9	15	11	13	9	10	4	8	122
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Farmers' Market

San Diego County	-	-	-	-	-	1	1	-	-	-	-	-	2
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Total California	8	14	17	22	13	25	19	18	16	13	16	11	192
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Florida	2	11	-	-	-	-	-	-	-	-	-	-	13
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Grand Total 1954-55	10	25	17	22	13	25	19	18	16	13	16	11	205
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Oakland Unloads:

Rail - none

Truck

California

L.A. Local District	1	1	2	4	3	2	6	6	1	3	5	1	35
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San Diego County	4	6	12	15	10	23	11	12	16	10	8	10	137
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Total California	5	7	14	19	13	25	17	18	17	13	13	11	172
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Florida	2	18	-	-	-	-	-	-	-	-	-	-	20
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Grand Total 1954-55	7	25	14	19	13	25	17	18	17	13	13	11	192
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1/ Basis: California Flat (3 $\frac{1}{2}$  or 4 $\frac{1}{2}$ x13 $\frac{1}{2}$ x16 1/8) 1,750; L.A. Lug 900; Florida Flat (3 $\frac{1}{2}$ x11 $\frac{1}{2}$ x14) 1,300 per carlot.

Sources: Unload reports for Los Angeles, San Francisco, and Oakland issued by the Federal-State Market News Service.

Federal-State Market News Service  
1220 N Street  
Sacramento 14, California  
February 21, 1958



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Origin	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Total
- Carlot Equivalents 1/ -													
Los Angeles Unloads:													
Rail - none													
Truck													
California													
Local	37	25	21	47	19	16	13	12	10	12	20	15	247
San Diego County	20	28	40	17	63	68	70	49	25	20	14	7	421
S.Barb-SLO	11	3	1	1	-	1	1	5	4	4	10	13	54
Total California	68	56	62	65	82	85	84	66	39	36	44	35	722
Florida	-	5	2	8	-	-	-	-	-	-	-	-	16
Grand Total 1955-56	68	62	64	73	82	85	84	66	39	36	44	35	738

### San Francisco Unleashes:

Ball - none

Truck

California

## Wholesale Market

L.A. Local District	3	4	2	2	3	3	2	3	1	3	6	1	33
San Diego County	7	5	7	10	9	10	10	10	4	4	1	4	81
Farmers' Market													
San Diego County	-	-	-	-	-	-	-	-	-	-	-	-	-
Total California	10	9	9	12	12	13	12	13	5	7	7	5	114
Florida	-	6	5	4	-	-	-	-	-	-	-	-	15
Grand Total 1955-56	10	15	14	16	12	13	12	13	5	7	7	5	129

### Oakland Unloads:

Ball - none

**Track**

California

[illegible]

California

Local	37	25	21	47	19	16	17	12	10	12	20	15	247
San Diego County	20	28	40	17	63	68	70	40	25	30	14	7	421
S.Barb-SLO	11	3	1	1	0	1	1	5	4	4	10	13	54
Total California	68	56	62	65	82	85	84	66	39	36	44	25	722
Florida	-	5	2	8	-	-	-	-	-	-	-	-	16
Grand Total 1955-56	68	62	64	73	82	85	84	66	39	36	44	25	738

San Francisco Unloads:

Rail - none

Truck

California

Wholesale Market

L.A. Local District	3	4	2	2	3	3	2	3	1	3	6	1	33
San Diego County	7	5	7	10	9	10	10	10	4	4	1	4	81
Farmers' Market													
San Diego County	-	-	-	-	-	-	-	-	-	-	-	-	-
Total California	10	9	9	12	12	13	12	13	5	7	7	5	114
Florida	-	6	5	4	-	-	-	-	-	-	-	-	15
Grand Total 1955-56	10	15	14	16	12	13	12	13	5	7	7	5	129

Oakland Unloads:

Rail - none

Truck

California

L.A. Local District	1	1	-	-	1	2	2	2	1	2	1	1	14
San Diego County	8	10	9	9	12	11	10	11	4	4	4	5	97
Total California	9	11	9	9	13	13	12	13	5	6	5	6	111
Florida	-	5	6	5	1	-	-	-	-	-	-	-	17
Grand Total 1955-56	9	16	15	14	14	13	12	13	5	6	5	6	128

1/ Basis: California Flat (3 $\frac{1}{2}$  or 4 $\frac{1}{2}$ x13 $\frac{1}{2}$ x16 1/8)-1,750; L.A. Lug 900; Florida Flat (3 $\frac{1}{2}$ x11 $\frac{1}{2}$ x14) 1,300 per carlot.

Source: Unload reports for Los Angeles, San Francisco, and Oakland Issued by the Federal-State Market News Service.

Federal-State Market News Service  
1230 N Street  
Sacramento 14, California  
February 21, 1958

UNLOADS OF AVOCADOS AT LOS ANGELES, SAN FRANCISCO, AND OAKLAND  
BY MONTHS, OCTOBER 1956 - SEPTEMBER 1957 INCLUSIVE

## UPLOADED OF AVOCADOS AT LOS ANGELES, SAN FRANCISCO, AND OAKLAND

BY MONTHS, OCTOBER 1956 - SEPTEMBER 1957 INCLUSIVE

[illegible]

SIO-S.Barb-Vent.

Total California	45	30	49	68	84	98	69	60	59	65	40	50	717
Florida	-	5	9	11	1	-	-	-	-	-	-	-	26
Grand Total 1956-57	45	35	58	79	85	98	69	60	59	65	40	50	743

San Francisco Unloads:

Rail - none

Truck

California

Wholesale Market

I.A. Local District	1	2	2										5
Los Angeles District				2	4	2	3	3	3	4	-	1	22
San Diego County	3	3	5	7	13	11	12	8	7	6	-	1	72
SIO-S.Barb-Vent.				-		-	-	-	-	-	4	4	-

Farmers' Market

San Diego County

Total California	4	5	7	9	17	13	15	11	10	10	6	6	113
Florida	-	2	9	-	-	-	-	-	-	-	-	-	11
Grand Total 1956-57	4	7	16	9	17	13	15	11	10	10	6	6	124

Oakland Unloads:

Rail - none

Truck

California

I.A. Local District	1	2	1										4
Los Angeles District				1	3	2	3	2	3	-	-	1	16
San Diego County	6	4	6	6	10	8	9	6	5	8	2	1	71
SIO-S.Barb-Vent.										6	2	3	11

Total California	7	6	7	7	13	10	12	9	7	14	4	5	101
Florida	-	4	15	8	-	-	-	-	-	-	-	-	27
Grand Total 1956-57	7	10	22	15	13	10	12	9	7	14	4	5	128

1/ Basis: California Flat (3 1/2 or 4 1/2 x 13 1/2 x 16 1/8) 1,750; I.A. lug 900; Florida Flat (3 1/2 x 12 1/2 x 14) 1,700 per carlot.  
Source: Unload reports for Los Angeles, San Francisco, and Oakland issued by the Federal-State Market News Service.

Federal-State Market News Service  
1320 F Street  
Sacramento, 14, California  
February 1, 1957

**TABLE 4**

**OUTBOUND TRUCK PASSINGS OF AVOCADOS THROUGH CALIFORNIA BORDER STATIONS**

**OCTOBER 1954 - SEPTEMBER 1957 INCLUSIVE**

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Total
<b>- Carlot Equivalents 1/</b>													
<b>1954-55</b>	24	26	44	79	91	124	115	109	90	54	48	42	846
<b>1955-56</b>	35	29	35	40	54	71	56	48	31	15	17	16	447
<b>1956-57</b>	13	11	15	28	31	45	44	38	33	23	18	16	315

**1/ Basis: Lugs and Flats 1,600 per carlot.**

**Source: Outbound Truck Passings reports issued by the Federal-State Market News Service, Sacramento, California.**



[fol. 50] Affidavit of service by mail (omitted in printing).

[fol. 59] [File endorsement~~omitted~~]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION  
No. 7648 Civil Action

[Title omitted].

NOTICE OF AND MOTION FOR DISMISSAL OR ALTERNATIVELY FOR  
STAY OF PROCEEDINGS AS TO FLORIDA LIME AND AVOCADO  
GROWERS, INC.—Filed March 14, 1958

To: Plaintiff, Florida Lime and Avocados Growers, Inc.,  
and

To: Isaac E. Ferguson, Esq., Its Attorney:

You, And Each Of You, Will Please Take Notice that  
on Monday, April 7, 1958, at 10:00 o'clock a.m., or as soon  
thereafter as counsel may be heard, the defendants above  
named will move the above-entitled Court for its order dis-  
missing the above-entitled action as to said plaintiff on the  
following grounds:

I

That plaintiff's complaint fails to allege facts showing  
a cause of action as to said plaintiff within the equity juris-  
[fol. 60] diction of the Federal District Court.

II

That this Honorable Court lacks jurisdiction of this suit  
as to said plaintiff for failure of the complaint to state  
facts showing that the matter in controversy exceeds the  
sum or value of \$3,000, exclusive of interests and costs  
within the purview of 28 U.S.C. 1331.

III

That this Honorable Court lacks jurisdiction of this suit  
as to said plaintiff for failure of the complaint to state

facts showing that the action or proceeding arises under any Act of Congress regulating commerce within the purview of 28 U.S.C. 1337.

#### IV

That the plaintiff Florida Lime and Avocado Growers, Inc.'s complaint fails to state a claim against these answering defendants upon which relief can be granted.

#### V

That should this Honorable Court retain jurisdiction it should hold the case as to said plaintiff in abeyance pending an authoritative interpretation of the challenged California statutes and regulations by the California courts.

Defendants' motion to dismiss is based on the pleadings, papers and documents on file with the Court, the affidavits filed herewith, the transcript of Deposition of Fred Piowaty, and the points and authorities stated herein, and the answers to written interrogatories which have been served upon a principal officer of the plaintiff corporation, when said answers have been filed with this Honorable Court.

Edmund G. Brown, Attorney General of the State of California; John Fourt, Deputy Attorney General, By John Fourt, Attorneys for Defendants.

[fol. 62]

#### POINTS AND AUTHORITIES IN SUPPORT OF MOTION

##### Jurisdiction and Status of Case

Plaintiff Florida Lime and Avocado Growers, Inc. is a Florida corporation engaged in the business of marketing avocados and other agricultural products grown in Florida. (Plfs. Complaint, Par. 1; Deposition of Piowaty, Tr. 249.) By its complaint filed in the District Court of the United States for the Northern District of California, Northern Division, on November 13, 1957, this plaintiff seeks an injunction to restrain the enforcement of section 792, Agricultural Code of California. The complaint names as defendants Goodwin J. Knight, Governor, Edmund G. Brown,

Attorney General, and W. C. Jacobsen, Director of Agriculture, of the State of California.

Plaintiff invokes the jurisdiction of the court under 28 U.S.C. sections 1331 and 1337 and also prays that the case be heard and determined by a three-judge court as provided by 28 U.S.C. sections 2281 and 2284.

In its complaint the plaintiff Florida Lime and Avocado Growers, Inc., attacks the constitutionality of section 792 of the Agricultural Code of California.<sup>1</sup> Plaintiff centers its constitutional attack on the part of section 792 which provides:

"All avocados, at the time of picking, and at all times thereafter, shall contain not less than 8% of oil, by weight of the avocado excluding the skin and seed."

The requirement that avocados contain not less than 8% oil was first enacted as part of the Agricultural Code of California in 1925. (Ch. 350, Calif. Stats. 1925).

Plaintiff asserts that the enforcement of section 792 of [fol. 63] the Agricultural Code, when applied to prohibit delivery and sale in California of avocados grown in Florida and shipped in interstate commerce, offends the Commerce Clause (Article 1, section 8, clause 3) and the Equal Protection Clause (Fourteenth Amendment, section 1) of the Constitution of the United States. (Plfs. Complaint, Pars. XXIX, XXX.)

#### Statement

Plaintiff Florida Lime and Avocado Growers, Inc. was organized in 1937. (*Id.*, Par. I.) It is engaged in the business of marketing avocados and other agricultural products grown in Florida. (*Ibid.*; Deposition of Piowaty, Tr. 249.) Between 1937 and 1954 plaintiff did not market avocados in California. (Deposition of Piowaty, Tr. 260.) It commenced marketing Florida avocados in California in 1954. (*Ibid.*)

In each of the crop years since 1954-1955, this plaintiff corporation has picked, packed, and distributed approximately 60,000 bushels of avocados of average value (FOB Florida) of about \$275,000.00. (Plfs. Complaint, Par. XIV.)

<sup>1</sup> Copies of California statutes and administrative regulations cited herein are attached hereto as Exhibit "B".

Its avocado sales in California for the past three seasons (1955-56, 1956-57, and 1957-58) have represented an average of only 13.53% of its total avocado sales. (Plfs. Ex. 20.) Moreover, the marketing of avocados is only one phase of plaintiff's business operations, apparently not even a major phase. (Deposition of Piowaty, Tr. 249; Objections to Defendants' Interrogatories Propounded to Harold E. Kendall and Fred Piowaty, filed with the Court, p. 3.)

Only a small fraction of Florida avocados shipped to California fail to comply with California's standardization laws. (Affidavit of S. R. Whipple, Assistant Chief, Bureau of Fruit and Vegetable Standardization, California Department of Agriculture, Exhibit "A" hereto.) The percentage of all Florida avocados so failing to comply during [fol. 64] the past four market seasons is as follows:

Marketing Season	Total Quantity Shipped into California, in Flats	Percentage Failing to Comply
Oct. 1, 1954-Sept. 30, 1955	58,500	1.01%
Oct. 1, 1955-Sept. 30, 1956	62,400	16.4%
Oct. 1, 1956-Sept. 30, 1957	83,200	2.4%
Oct. 1, 1957-Dec. 31, 1957	26,000	5.9%

Total Average **6.4%**

(Ibid.)

Upon arrival of a lot of Florida avocados at a terminal market in California, the avocados are inspected by County Agricultural Commissioner inspectors for defects such as insect damage, freezing injury, decay, and rancidity and for oil content (secs. 782, 792, Calif. Agr. Code; secs. 1397, 1397.1, 1397.5, 1397.6, Title 3, Calif. Adm. Code). When the lot of avocados is found not to comply with state standards, the owner or person in possession may recondition the lot by removing the noncomplying fruit (sec. 785, Calif. Agr. Code). If the owner or person in possession prefers, he may obtain a release of the lot in order that he may market the avocados without the state (secs. 785, 830.1, Calif. Agr. Code; 3 Calif. Admin. Code 1366.2; Plfs. Complaint, Par. XXVI). Mere possession of a lot of avocados which fail to comply with the standards of quality imposed by the

California Agricultural Code does not constitute a violation of law (17 Ops. Cal. Atty. Gen. 154, April 20, 1951; 784-785, Calif. Agr. Code). Thus plaintiff exposes itself to no criminal or civil liability by virtue of shipping Florida avocados into the State of California, even though such avocados do not comply with state law.

If the owner or person in possession, after receiving written notice of the noncompliance of the lot of avocados, [fol. 65] chooses neither to recondition nor to dispose of the lot outside the state, the inspecting official files a petition in a California court requesting a court order that the non-complying lot be abated as a nuisance (sec. 785, Calif. Agr. Code). The court may in its discretion order the lot released, or that it be reconditioned, or that it be disposed of under conditions imposed by the court (sec. 785, Calif. Agr. Code). The owner or person in possession may also file a petition requesting a summary court order that the lot be released to him (sec. 785, Calif. Agr. Code). Only if the owner or person in possession of the noncomplying avocados attempts to sell them to a retailer, without inspection, or sells them after receiving notice of the non-compliance and without reconditioning the lot, would a violation occur. Enforcement action by the State could take the form of either a civil action for penalties equaling the value of the fruit, or for misdemeanor, criminal action for fine not exceeding \$500.00, or six months' imprisonment. (Secs. 784, 785, 785.6, 831, Calif. Agr. Code).

Plaintiff Florida Lime and Avocado Growers, Inc., has not taken advantage of the opportunity to recondition lots of noncomplying avocados. (Plfs. Complaint, Par. XXIV.) Nor is there any evidence that this plaintiff corporation has sold a noncomplying lot in California. Rather, this plaintiff has followed the practice of shipping lots that fail to pass California's oil content inspection to neighboring markets outside California, thereby avoiding any violation of California law. (*Ibid.*; Deposition of Piowaty, Tr. 268-269.)

Plaintiff Florida Lime and Avocado Growers, Inc. alleges that it is suffering "great economic detriment and irreparable loss" as a result of the California statute. (Plfs. Complaint, Par. XXXI.) Plaintiff measures this alleged



damage by the reduction in anticipated gross return on non-[fol. 66] complying lots reshipped to markets outside California. (Plfs. Complaint, Par. XXVI.) Thus plaintiff Florida Lime and Avocado Growers, Inc. alleges that it made the following shipments in 1955 which were found not to comply with California law and which were sold outside California:

Date	Number of Lugs Rejected	Expected Gross Return on Entire Shipment	Net Yield on Entire Shipment
11/10/55	1129	\$2,088.65	\$ 711.60
11/12/55	2083	\$3,853.55	\$1,681.03
11/14/55	2208	\$4,084.80	\$1,788.20
12/ 8/55	900	\$2,200.00	\$ 548.00

(*Ibid.*)

On deposition, Mr. Fred Piowaty, Sales Manager of plaintiff Florida Lime and Avocado Growers, Inc., was able to identify only one other shipment which was found not to comply with California law since this plaintiff commenced shipping avocados to California in 1954. (Deposition of Piowaty, Tr. 255; Plfs. Ex. 21.)\* This single additional shipment, of which 361 lugs were found not to comply, was made in November, 1957 and apparently was sold outside California at no loss in anticipated gross return. (Deposition of Piowaty, Tr. 258; Plfs. Ex. 21.)

These five rejected lots, totaling 6,681 lugs of avocados, represent only 5.47% of all the avocados shipped to California by plaintiff during the corresponding period from October 1954 to December 1957. (See Defendants' Exhibit [fol. 67] "S" showing that plaintiff shipped a total of 122,078 lugs of avocados to California during the seasons 1954-55, 1955-56, 1956-57 and 1957-58.) Moreover, as noted above (see p. 5 *supra*), shipments to California represent

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\* Although Mr. Piowaty had a record of only five shipments which were found not to comply, he estimated that plaintiff Florida Lime and Avocado Growers, Inc. had experienced a reduction in anticipated gross return in the amount of \$21,000 as a result of selling noncomplying lots outside California between 1954 and January, 1958. (Deposition of Piowaty, Tr. 274-275.)

only 13.53% of plaintiff's total avocado sales. This means that the 6,681 lugs rejected represent only .74%—less than 1%—of plaintiff's total avocado sales during the period in question. And avocados are only one phase, apparently not even a major phase, of plaintiff's business. (See p. 5 *supra*.)

## ARGUMENT

### I. The Action Should Be Dismissed for Lack of Equity in the Bill.

#### A. A Federal Court of Equity Will Interfere With the Enforcement of State Laws Only in Exceptional Circumstances Where There Is a Threat of Great and Immediate Irreparable Injury.

This is an equitable action to enjoin state officials from enforcing a state criminal statute.

It is elementary that the power of a court of equity to act is a discretionary one. *American Federation of Labor v. Watson*, 327 U.S. 582, 593; *Pennsylvania v. Williams*, 294 U.S. 176, 185. Even though a court of equity has authority to hear and decide a case on the merits, it should not invoke its jurisdictional powers unless plaintiff has a cause of action in equity. *American Federation of Labor v. Watson*, 327 U.S. at 593; *Douglas v. Jeannette*, 319 U.S. 157, 162.

Plaintiff, in praying for an injunction restraining defendants as state officers from enforcing laws of California, is seeking a remedy that a federal court of equity will grant only in "exceptional circumstances." *Spielman Motor Co. v. Dodge*, 295 U.S. 89, 95. There is a well recognized general policy of the federal courts against interfering with a state's enforcement of its own laws, even though unconstitutional. *American Federation of Labor v. Watson*, *supra*; *Douglas v. Jeannette*, *supra*; *Watson v. Buck*, 313 U.S. 387; *Beal v. Missouri Pac. R. Co.*, 312 U.S. 45; *Spielman Motor Co. v. Dodge*, *supra*. Federal courts are especially reluctant to interfere with the enforcement of state criminal laws. *Douglas v. Jeannette*, 319 U.S. at 163; *Spielman Motor Co. v. Dodge*, 295 U.S. at 95.

A plaintiff asking a federal court of equity to disturb the delicate balance of our federal-state relations by restraining state officers from the performance of their official acts must pass a "strict test" (*American Federation of Labor v. Watson*, 327 U.S. at 593); he must show that interference by the federal chancellor is necessary to prevent "irreparable injury" both "great and immediate." *Spielman Motor Co. v. Dodge*, 295 U.S. at 95. Otherwise, plaintiff should first raise his constitutional issues in the state courts. *Ibid.*

This policy of caution on the part of federal courts of equity was stated by Mr. Justice McReynolds in *Fenner v. Boykin*, 271 U.S. 240, 243-244:

"Ex parte Young, 209 U.S. 123, and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the state and must decide when and how this is to be done. The accused should first set up and [fol. 69] rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection. The Judicial Code provides ample opportunity for ultimate review here in respect of Federal questions. An intolerable condition would arise if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some Federal court. *Hygrade Provision Co. v. Sherman*, 266 U.S. 497, 500."

The same rule was articulated more recently by Mr. Chief Justice Stone in *Douglas v. Jeannette*, 319 U.S. 157, 162-164:

"The power reserved to the states under the Constitution to provide for the determination of controversies in their courts may be restricted by federal district courts only in obedience to Congressional legislation in conformity to the Judiciary Article of the Constitution. Congress, by its legislation, has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the state courts the trial of criminal cases arising under state laws, subject to review by this Court of any federal questions involved. Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; and [fol. 70] equitable remedies infringing this independence of the states—though they might otherwise be given—should be withheld if sought on slight or inconsequential grounds. *Di Giovanni v. Camden F. Ins. Assoc.*, 296 U.S. 73, *Matthews v. Rodgers*, 284 U.S. 521, 525, 526, cf. *United States ex rel. Kennedy v. Tyler*, 269 U.S. 13, *Massachusetts State Grange v. Benton*, 272 U.S. 525."

"It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. *Davis & F. Mfg. Co. v. Los Angeles*, 189 U.S. 207, *Fenner v. Boykin*, 271 U.S. 240. Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes

of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger or irreparable injury 'both great and immediate.' *Spielman Motor Sales Co. v. Dodge*, 295 U.S. 89, 95, and cases cited; *Beal v. Missouri P. R. Corp.*, 312 U.S. 45, 59, and cases cited; *Watson v. Buck*, 313 U.S. 387; *Williams v. Miller*, 317 U.S. 599."

[fol. 71] And Mr. Justice Cardozo stated the policy in this way:

"Only a case of manifest oppression will justify a federal court in laying such a check upon administrative officers acting *colore officii* in a conscientious endeavor to fulfill their duty to the state. A prudent self-restraint is called for at such times if state and national functions are to be maintained in stable equilibrium. Reluctance there has been to use the process of federal courts in restraint of state officials though the rights asserted by the complainants are strictly federal in origin. [Cases cited.]" *Hawks v. Hamill*, 288 U.S. 52, 61.

#### B. Plaintiff Has Failed to Meet the "Strict Test" of Great and Immediate Irreparable Injury.

It is readily apparent that there are not the exceptional circumstances in this case which would justify an exercise of this court's powers of equity. Plaintiff Florida Lime and Avocado Growers, Inc., is not facing a danger of irreparable harm both great and immediate from the enforcement of California's 8% oil content law.

This plaintiff corporation conducts a substantial business marketing several agricultural products other than avocados. (See p. 5, *supra*.) The marketing of avocados apparently is not even a major phase of this plaintiff's business. (See p. 5, *supra*.) Further, plaintiff's avocado sales in California represent on the average only 13.53% of its total avocado sales. (See p. 5, *supra*.) The California statute is not preventing plaintiff from carrying on even this minor fraction of its total business represented by avocado sales in the remote California market. The five re-



[fol. 72] jected shipments plaintiff complains of represent only 5.47% of plaintiff's total shipments to California and .74% of all avocados handled by plaintiff during the period in question. (See p. 8 and 9, *supra*.) Moreover, plaintiff has not attempted to recondition these lots so that they could be sold in California. (See p. 7, *supra*.)

Even if the California avocado market were totally unavailable to plaintiff, it does not appear that plaintiff's business would be seriously threatened. Plaintiff attempted no California sales for the first 17 years of its existence, yet apparently grew and prospered. (See p. 5, *supra*.) There is no allegation that the entire crop of Florida avocados cannot be adequately marketed in the remaining 47 states. Cf. *Alabama v. Arizona*, 291 U.S. 286, 292. Indeed, since California is the nation's largest producer of avocados (Plfs. Complaint, Par. XV) and is distant from Florida, it is apparent that its importance as a market for plaintiff's avocados is inherently limited.

Thus we have this picture, when stated most favorably to plaintiff: As to one of its many products in one of its many markets it is inconvenienced but not prevented from doing business. This falls far short of irreparable injury both great and immediate. It perhaps would be more appropriate to characterize any such damages as "slight" and "inconsequential." *Douglas v. Jeannette*, 319 U.S., at 163.

Plaintiff is certainly suffering no greater inconvenience than the plaintiff in *Spielman Motor Co. v. Dodge*, 295 U.S. 89. There the plaintiff was seeking to enjoin enforcement of a state-adopted code of unfair competition regulating plaintiff's business practices as a retail dealer in automobiles. The Supreme Court held that the bill should have been dismissed for failure to state a case within the equitable jurisdiction of the District Court. The Court found an absence of a danger of irreparable harm both great and immediate such as would constitute the exceptional circumstance [fol. 73] stances which would justify an interference with the enforcement of state laws. Mr. Chief Justice Hughes, writing the opinion for a unanimous Court, stressed that plaintiff had a large business which could be continued under the statute without prohibition or serious interference. He stated:

"The bill alleged that appellant had a large business in buying and selling motor vehicles but the statute did not prohibit the continuance of that business and the bill gave no facts to show that the particular requirements of the Code, which were in question, would create such a serious interference as to require equitable relief." *Id.* at 96.

Plaintiff seeks to enjoin enforcement of a state statute. Yet it is questionable whether plaintiff Florida Lime and Avocado Growers, Inc. has suffered any damages whatsoever from the enforcement or a threat of enforcement of the 8% oil content statute. The statute has not been enforced against the plaintiff, and, significantly, plaintiff has not alleged that defendants have threatened enforcement. This is understandable since plaintiff has not, evidently, sold any noncomplying avocados in California. Rather it has, voluntarily and without any court or administrative order, reshipped the noncomplying lots to markets outside California. If there was a reduction in plaintiff's gross return, it was a result of plaintiff's voluntary compliance with the law, rather than enforcement or threat of enforcement of the law. Any damage could not, therefore, be the result of any such enforcement or threatened enforcement. Defendants of course stand ready to perform their duties, but

"A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity." *Watson v. Buck*, 313 U.S. 387, 400.

[fol. 74] C. Plaintiff Should First Attack the Statute in the State Courts or by State Administrative Action.

In the complete absence of "exceptional circumstances" which would warrant equitable interference with state law enforcement, plaintiff

"should first set up and rely upon his defense in the state courts, even though this involves a challenge of

the validity of some statute, unless it plainly appears that this course would not afford adequate protection." *Fenner v. Boykin*, 271 U.S. 240, 244.

There would, of course, be opportunity for review of the federal issues by the United States Supreme Court. *Douglas v. Jeannette*, 319 U.S. 157, 167; *Spielman Motor Co. v. Dodge*, 295 U.S. 89, 95-96.

Plaintiff has had, for many years and yet today, ample opportunities in the California courts to challenge the validity of the 8% oil content statute by an action for declaratory relief (sec. 1060, Calif. Code Civ. Proc.) or by petitioning for an order to show cause why a particular seized lot should not be released (sec. 785, Calif. Agr. Code). Plaintiff could expose itself to a nuisance action, a civil action for penalties, or a misdemeanor prosecution (secs. 784, 785, 785.6, 831, Calif. Agr. Code) simply by selling in California a single shipment of Florida avocados which have failed to comply with the 8% standard. In any such action plaintiff could challenge the constitutional validity of the statute by way of defense. *Douglas v. Jeannette*, *supra*; *Spielman Motor Co. v. Dodge*, *supra*.

Plaintiff could proceed in the state courts without any disruption of its normal business routine. By selling one noncomplying lot in California, plaintiff would subject itself to a single enforcement action, thereby avoiding the [fol. 75] danger of multiplicity of prosecutions. Cf. *Beal v. Missouri Pac. R. Co.*, 312 U.S. 45; *Spielman Motor Co. v. Dodge*, 295 U.S. 85.

Apparently plaintiff feels that it has a right to protection from a federal court of equity from even a single criminal prosecution in the state courts. But the contrary is true:

"No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for injunction." *Douglas v. Jeannette*, 319 U.S. 157, 163.

In addition to judicial remedies, plaintiff may have available an administrative remedy under state law. Plaintiff's alleged difficulties with meeting the California standard could be alleviated or entirely removed through action of the state Director of Agriculture in establishing emergency standards which supplement or supersede section 792 of the California Agricultural Code. The Director is authorized to promulgate such emergency standards by section 790.5 of the same Code. A remedy before a state administrative agency must be exhausted before resort may be had to the federal courts. *First National Bank v. Board of Commissioners*, 264 U.S. 450, 454.

D. A Further Reason for Dismissing the Action Is the Presence of Unsettled Issues of State Law Which Could Moot the Constitutional Issues.

A further reason why this federal court of equity should dismiss the bill and leave plaintiff to the state courts is the presence of antecedent state law issues which should be resolved by the state courts before the constitutional [fol. 76] issues are decided. *Douglas v. Jeannette*, 319 U.S. 157; *Beal v. Missouri Pac. R. Co.*, 312 U.S. 45; *Gregg v. Winchester*, 173 F. 2d 512, *certiorari denied*, 338 U.S. 847; *Bradford v. Hurt*, 84 F. 2d 722. In *American Federation of Labor v. Watson*, 327 U.S. 582, 595-596, the Supreme Court explained why federal courts of equity should avoid deciding constitutional issues which may become academic upon the resolution of issues of state law.

"As we have said, the District Court passed on the merits of the controversy. In doing so at this stage of the litigation, we think it did not follow the proper course. The merits involve substantial constitutional issues concerning the meaning of a new provision of the Florida constitution, which, so far as we are advised, has never been construed by the Florida courts. Those courts have the final say as to its meaning. When authoritatively construed, it may or may not have the meaning or force which appellees now assume that it has. In absence of an authoritative interpretation, it is impossible to know with certainty what constitu-

tional issues will finally emerge. What would now be written on the constitutional questions might therefore turn out to be an academic and needless dissertation."

There are at least three issues of state law which plaintiff could and should present to the state courts. (See p. 22, *infra*.) The resolution of any one of these issues in plaintiff's favor would moot the constitutional issues.

#### E. Conclusion: The Bill Should Be Dismissed for Lack of Equity.

The final evidence of the lack of equity in the bill is that the plaintiff has conducted its business for many years in the face of California's 8% oil content law without feeling [fol. 77] the need to seek relief from a federal court of equity. The statute was enacted in 1925. (See p. 4, *supra*.) Plaintiff began its business operations in 1937. (See p. 5, *supra*.) Not until 1954 did plaintiff begin marketing avocados in California. (See p. 5, *supra*.) And not until November 1957 did plaintiff seek relief from this federal court of equity. Any delay that might be occasioned by litigating the issues in the state courts would be insignificant when compared with the delay resulting from plaintiff's own inaction. The bill should be dismissed for lack of equity.

#### II. Plaintiff's Complaint Fails to Show That the Matter in Controversy Exceeds the Sum or Value of \$3,000 Within the Purview of 28 U.S.C. 1331.

Plaintiff Florida Lime and Avocado Growers, Inc. asserts that its action is within the jurisdiction of the Court by virtue of 28 U.S.C. 1331 in that it arises under the commerce clause of Article 1, Section 8, and the equal protection clause of the United States Constitution, and that as to each plaintiff, the matter in controversy exceeds the value of \$3,000.00 (Plfs. Complaint, Par. III). In determining whether the requisite jurisdictional amount is in controversy, where it does not appear that the plaintiff is absolutely prevented by state law from conducting its business, the decisive question is not the value or net worth of the business but the value of the right to be free from regula-



tion (*Kroger Grocery Co. v. Lutz*, 299 U.S. 300). Paragraph XXX, plaintiff's complaint, alleges that the California statute in question limits the California market for the avocados marketed by the plaintiff "at great economic detriment and irreparable loss" (Plfs. Complaint, p. 15, 11. 4-5). However, the complaint fails to state facts sufficient to warrant such legal conclusions. For example, paragraph XXVI, plaintiff's complaint alleges that the [fol. 78] Florida Lime and Avocado Growers, Inc. made shipments in 1955 which were found not to comply with California law and which were sold outside of California, not apparently at any out-of-pocket loss to plaintiff, but merely at a reduction in anticipated gross returns. (See p. 8, *supra*.)

This reduction in anticipated gross returns during the year 1955 avail the plaintiff nothing for purposes of meeting the requirements of 28 U.S.C. 1331 because "past losses cannot be used to build up the jurisdictional requirement in an action for an injunction to restrain enforcement of the [state] statute. *Dunning v. Agricultural Prorate Advisory Comm.*, 38 F. Supp. 393, 394 (District Court N.D., California, S.D.). It appears doubtful whether plaintiff Florida Lime and Avocado Growers, Inc. had any connection with these 1955 shipments which were made by its predecessor 1937 cooperative which was reorganized as a corporation for profit in 1956, a year after these shipments were made (Plfs. Complaint, Par. I). It follows that the plaintiff Florida Lime and Avocado Growers, Inc. has not alleged any facts in its complaint showing that the right to be free of regulation by section 792, California Agricultural Code, is of the value of \$3,000 within the jurisdictional prerequisites of 28 U.S.C. 1331.

### III. Plaintiff's Complaint Fails to Show That the Action or Proceeding Arises Under Any Act of Congress Regulating Commerce Within the Purview of 28 U.S.C. 1337.

Plaintiff's complaint alleges that section 792, California Agricultural Code, is unconstitutional when applied to avo-

cados delivered for sale in interstate commerce in compliance with standards established by the Secretary of Agriculture, pursuant to the Federal Marketing Agreement Act of 1937 (Plfs. Complaint, Par. XXX). However an analysis of the federal act discloses that it authorizes co-operative federal-state action in the field of agricultural [fol. 79] marketing (7 U.S.C. 610(i)). Thus federal marketing orders may cover the same geographical area as a state regulation covering the same area and commodity without causing preemption of the field as a matter of law.

#### Federal Marketing Orders

Marketing Order Governing Dried Figs Produced in California, 7 C.F.R. 964

Marketing Order Governing Beurre d'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California, 7 C.F.R. 939

#### State Marketing Orders

Marketing Order for Dried Figs, issued effective July 22, 1953

Marketing Order for Fresh Fall and Winter Pears Grown in California, issued effective August 26, 1951

Marketing Order for Fresh Bartlett Pears, issued effective August 9, 1939.

In the instant case, however, there is not even geographic overlapping of federal and state legislative action since the federal marketing order governing avocados grown in South Florida is applicable only to "the handling of avocados grown in the designated production area" of "the counties of Brevard, Osceola, Polk, Hillsborough, and Pinellas in the State of Florida, and all of the counties of that state situated south of such counties" (Plfs. Complaint, Ex. A; 7 C.F.R. 969(3), 969.4). This marketing order further provides that "The said order is limited in its application to the smallest regional production area that is practicable . . ." (Plfs. Complaint, Ex. A; 7 C.F.R. 969(3)). Under these circumstances, defendants respectfully submit that the Federal Marketing Agreement Act of 1947 does not invalidate state action in the field of agricultural marketing, and that as a matter of law the Secretary

of Agriculture did not intend to preempt the field of avocado marketing regulation in promulgating the federal Florida Avocado Marketing Order. *Parker v. Brown*, 317 U.S. 341, 358; cf. *Townsend v. Ycomans*, 301 U.S. 441, *Reed v. Colorado*, 187 U.S. 137. It follows that plaintiff's allegations of conflict between the state and federal regulation of avocados stands as a mere colorable allegation which fails to comply with the requirements of 27 U.S.C.A. 1337. *Levering Co. v. Morrin*, 289 U.S. 103, 105; *Newburyport Water Co. v. Newburyport*, 193 U.S. 361.

IV. Alternatively, This Honorable Court Should Hold the Case in Abeyance Pending an Authoritative Interpretation of California Law by California Courts.

Federal courts of equity in the exercise of a sound discretion should avoid passing on substantial constitutional issues concerning the meaning of California statutes and regulations which have never been construed by the California courts. *American Federation of Labor v. Watson*, 327 U.S. 582. When authoritatively construed, section 792, California Agricultural Code, may or may not have the meaning or force which plaintiff assumes that it has. In the absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What this Honorable District Court might decide on federal constitutional issues might hereafter turn out to be an academic and needless dissertation. *American Federation of Labor v. Watson*, 327 U.S. 582, 595-596.

There are present in this case issues of interpretation of California law which plaintiffs should raise before the Director of Agriculture, and in the California courts.

Plaintiff's complaint alleges that the matter in controversy is the right of plaintiff to market Florida avocados in California free from restriction of section 792, Agricultural Code (Plfs. Complaint, Par. III). This allegation raises the antecedent issue of state law whether this statute was intended by the California legislature to apply to avocados moving into California while in interstate commerce, or whether it was to apply only to sales of

avocados in intrastate commerce. Cf. *Bourjois v. Chapman*, 301 U.S. 183. So far as defendants can ascertain, there are no California judicial decisions construing the reach of this statute. This question of statutory interpretation, which could moot the constitutional issues, can be determined with finality only by the California courts (*American Federation of Labor v. Watson*, 327 U.S. 582).

Plaintiff's complaint suggests another issue of state law which could be submitted to the California courts. This is the issue whether California's avocado standardization law was intended by the state legislature to apply to avocados grown in another state and marketed pursuant to a Federal Marketing Order promulgated under the Agricultural Marketing Act of 1937.

Still a third issue of state law which plaintiff should present to the California courts is the validity under the California statute (sec. 782, Calif. Agr. Code) of the implementing regulation establishing the official method of securing samples from lots of avocados and the method of chemical analysis of oil content. (3 Calif. Adm. Code sections 1397.5, 1397.6.) Cf. *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496.

Defendants would endeavor in the state court to establish the validity of these regulations and statutes under state law and their applicability to plaintiff's avocados shipped from Florida. But defendants recognize that other possible interpretations exist and that plaintiff can and should present these questions to a state court before asking a federal court of equity to rule on speculative federal constitutional questions. If plaintiff was successful in establishing its case in the state courts on these issues there [fol. 82] would be no need for this Honorable Court to rule on the posed federal questions.

In light of these uncertain issues of state law, this Honorable Court should, if it does not dismiss the action, remit the parties to the California courts for resolution of the state law questions. *American Federation of Labor v. Watson*, 327 U.S. 582, *Chicago v. Fieldcrest Dairies*, 316 U.S. 168, *Railroad Commission v. Pullman Co.*, 312 U.S. 496, *East Coast Lumber Co. v. Babylon*, 174 F. 2d 106.

Wherefore, defendants respectfully pray that the complaint of the plaintiff, Florida Lime and Avocado Growers, Inc. be dismissed or alternatively that the action be stayed pending the resolution of issues of state law by the California courts.

Edmund G. Brown, Attorney General of the State of California; John Fourt, Deputy Attorney General, By John Fourt, Attorneys for Defendants.

[fol. 83]

EXHIBIT "A" TO MOTION

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
NORTHERN DIVISION  
No. 7648 Civil Action

FLORIDA LIME AND AVOCADO GROWERS, INC., a Florida corporation, and SOUTH FLORIDA GROWERS ASSOCIATION, INC., a Florida corporation,

*Plaintiffs,*

vs.

W. C. JACOBSEN, Director of the Department of Agriculture of the State of California, GOODWIN J. KNIGHT, Governor of the State of California, and EDMUND G. BROWN, Attorney General of the State of California,

*Defendants.*

AFFIDAVIT OF S. R. WHIPPLE

STATE OF CALIFORNIA     )  
                                      ) ss.  
COUNTY OF SACRAMENTO)

Comes now S. R. WHIPPLE and deposes and says:

That he is Assistant Chief, Bureau of Fruit and Vegetable Standardization, California Department of Agriculture; that he has held said position since August, 1945; that

in such position he is charged with the duty of supervising the inspection work performed by inspectors of the Bureau of Fruit and Vegetable Standardization and the California County Agricultural Commissioners and their staffs in the [fol. 84] inspection of avocados found in California wholesale terminal markets in the enforcement of section 792 of the California Agricultural Code, which requires that avocados offered for sale, among other things, also must meet a minimum oil content requirement of eight per cent (8%).

That official records maintained by the federal-state market news service, California Department of Agriculture, show that during the respective marketing seasons the following quantities of avocados were shipped from Florida and unloaded in the California wholesale market terminals at Los Angeles, San Francisco, and Oakland, California:

<u>Marketing Season</u>	<u>Destination</u>			<u>Total Car- loads</u>	<u>Total Flats</u>
	<u>L.A.</u>	<u>S.F.</u>	<u>Oak- land</u>		
Oct 1, 1954-Sept. 30, 1955	12	13	20	45	58,500
Oct. 1, 1955-Sept. 30, 1956	16	15	17	48	62,400
Oct. 1, 1956-Sept. 30, 1957	26	11	27	64	83,200
Oct. 1, 1957-Dec. 31, 1957	2	2	16	20	26,000

Source: Unload Reports for Los Angeles, San Francisco and Oakland as issued by Federal-State Market News Service. Other markets not reported. Conversions: 1300 flats per carload.

that he is informed and believes and on such information and belief alleges that these quantities account for substantially all of the Florida avocados shipped into California during the period of time from October 1, 1954 through December 31, 1957.

That the official records of the Bureau of Fruit and Vegetable Standardization, California Department of Agriculture, disclose the following rejections of containers of Florida avocados in California because the lots of avocados tested failed to comply with the eight per cent (8%) oil standard set forth in section 792, California Agricultural Code:



[fol. 85]

Marketing Season	Flats	Percent of Total*
Oct. 1, 1954-Sept. 30, 1955	591	1.01%
Oct. 1, 1955-Sept. 30, 1956	10284	16.4%
Oct. 1, 1956-Sept. 30, 1957	1867	2.4%
Oct. 1, 1957-Dec. 31, 1957	1540	5.9%

\* Percentage obtained by dividing flats rejected in each season by the flats received\*for the same period each season.

/s/ S. R. WHIPPLE  
S. R. Whipple

Subscribed and sworn to  
before me this 3d day  
of March, 1958.

/s/ LAURA M. MIDDLETON  
Notary Public in and for the  
County of Sacramento,  
State of California.

(Seal)

[fol. 86]

#### EXHIBIT "B" TO MOTION

#### COPIES OF CALIFORNIA STATUTES AND ADMINISTRATIVE REGULATIONS CITED IN THESE POINTS AND AUTHORITIES

Cal. Agr. Code, Sec. 782, provides:

"The director and the commissioners of each county of the State, their deputies and inspectors, under the supervision and control of the director shall enforce this chapter. The refusal of any officer authorized under this chapter to carry out the orders and directions of the director in the enforcement of this chapter is neglect of duty.

The director may prescribe methods of selecting samples of lots or containers of fruits, nuts and vegetables on a basis of size or other specific classification, which shall be reasonably calculated to produce by such sampling fair

representations of the entire lots or containers sampled; establish and issue official color charts depicting the color standards and requirements established in this chapter; and make such other rules and regulations as are necessary to secure uniformity in the enforcement of this chapter.

Any sample taken under the provisions of this chapter shall be prima facie evidence, in any court in this State, of the true condition of the entire lot in the examination of which said sample was taken. A written notice of violation, issued by a duly qualified representative of the director or by commissioners, their deputies and inspectors holding valid standardization certificates of eligibility as enforcing officers of this chapter, stating that a certain lot of produce is in violation of the provisions of this chapter and based upon the examination of such sample, shall be prima facie evidence, in any court in this State, of the true condition of the entire lot."

[fol. 87] Cal. Agr. Code, Sec. 784, provides:

"It is unlawful to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, cause to be transported or sell any fruits, nuts or vegetables in bulk or in any container or subcontainer unless such fruits, nuts and vegetables, and their containers, conform to the provision of this chapter."

Cal. Agr. Code, Sec. 785, provides:

"Any lot of fruits, nuts or vegetables, including the containers thereof, which is not in compliance in all respects with the provisions of this chapter and rules and regulations issued hereunder, is hereby declared to be a public nuisance. Any enforcing officer, if he has reason to believe that any such lot is not in compliance as aforesaid, may hold such lot pending proceedings to condemn and abate such nuisance, as herein provided.

The officer may affix to any lot so held a tag or notice warning that the lot is held and stating the reasons therefor. It is unlawful for any person other than an authorized enforcing officer to detach, alter, deface or destroy any such tag or notice affixed to any such lot, or to remove or

dispose of such lot in any manner or under conditions other than as prescribed in such tag or notice, except upon written permission of an authorized enforcing officer or by order of court.

The officer by whom any such lot is held shall cause notice of noncompliance to be served upon the person in possession of said lot. The notice of noncompliance shall include a description of the lot, the place where and the reasons for which it is held, and shall give notice that said lot is a public nuisance and subject to disposal as provided in this [fol. 88] section, unless within a specified time said lot shall have been reconditioned or the deficiency otherwise corrected so as to bring said lot into compliance.

If the person so served is not the sole owner of the lot, or does not have authority as agent for the owner to bring said lot into compliance, it shall be the duty of such person in writing to notify the officer by whom such lot is held of the names and addresses of the owner or owners and all other persons known to him to claim an interest in said lot. Any person so served shall be liable for any loss sustained by such owner or other person whose name and address he has knowingly concealed from such officer.

If the lot has not been reconditioned or the deficiency otherwise corrected so as to bring said lot into compliance within the time specified in the notice, then the enforcing officer shall cause a copy of said notice to be served upon all persons designated in writing by the person in possession of said lot to be the owner or to claim an interest therein. Any notice required by this section may be served personally or by mail addressed to the person to be served at his last known address.

The enforcing officer, with the written consent of all such persons so served, is hereby authorized to destroy such lot or otherwise to abate the nuisance. If any such person fails or refuses to give such consent, then the enforcing officer shall proceed as provided hereinafter.

If the lot so held is perishable or subject to rapid deterioration, the enforcing officer may file a verified petition in any superior or inferior court of the State to destroy such lot or otherwise abate the nuisance. The petition shall show the condition of the lot, that the lot is situated within

the county, that the lot is held, and that notice of non-[fol. 89] compliance has been served as herein provided. The court may thereupon order that such lot be forthwith destroyed or the nuisance otherwise abated as set forth in said order.

If the lot so held is not perishable nor subject to rapid deterioration, the enforcing officer shall immediately report the condition of said lot to the director. Within five (5) days from the receipt of such report, the director may file a petition in the superior court in the county where the lot is situated for an order to show cause, returnable in five (5) days, why the lot should not be abated. The owner or person in possession on his own motion within five (5) days from the expiration of the time specified in the notice of noncompliance may file a petition in said court for an order to show cause, returnable in five (5) days, why said lot should not be released to petitioner and any warning tags previously affixed removed therefrom. Final determination by said court in either case shall be within a period of not to exceed twenty (20) days from the date said petition was filed.

The court may enter judgment ordering that said lot be condemned and destroyed in the manner directed by the court or relabeled, or denatured or otherwise processed, or sold or released upon such conditions as the court in its discretion may impose to insure that the nuisance will be abated. In the event of sale by order of court, the costs of storage, handling and reconditioning or disposal shall be deducted from the proceeds of sale and the balance, if any, paid into court for the owner."

Cal. Agr. Code, Sec. 785.6, provides:

"Any person who violates any provision of this chapter shall, in addition to any penalty otherwise provided, be liable civilly, in an action brought by the director, for a penalty [fol. 90] in an amount equal to the value which the fruits, nuts, or vegetables involved in the violation would have if they conformed to the requirements of this chapter. The value of such noncomplying fruits, nuts and vegetables shall be the current market value of the lowest priced grade of a

marketable commodity of like kind and nature at the time and place of the violation. Any money recovered under this section shall be paid into the Department of Agriculture Fund."

Cal. Agr. Code, Sec. 790.5, provides:

"Whenever, upon petition of persons interested in the growing or handling of fruits, nuts or vegetables, or upon his own motion the director finds that any provision of this chapter relating to standards for any commodity or type of container, or relating to any markings required on any container, or any arrangement of the produce within a container, is difficult or impossible of performance by reason of laws or orders promulgated by authority of the Government of the United States, or because of scarcity of materials, labor, or equipment used in the production or marketing of any commodity regulated by this chapter, or that any such provision of this chapter results in serious waste of useful produce otherwise available for human consumption or in serious waste of other resources, or prevents utilization of new technological developments, to the serious disadvantage of California producers, he may establish emergency standards for any such commodity or container, or for the marking of containers, or for the arrangement of produce within the container; and until expiration as hereinafter provided, such emergency standards shall be in full force and effect, notwithstanding any other provision of this chapter, and all provisions of this chapter applying to [fol. 91] standards shall apply to such emergency standards in lieu of the standards set forth in this chapter.

All emergency standards established under the provisions of this section shall be reasonably calculated to effectuate the purposes of the standards which they supersede. No emergency standards shall be established which tend to raise or lower any standards relating to the maturity or to the carrying or keeping quality of any commodity, and no emergency standards shall be construed to modify in any respect any provision of this chapter designed to prevent deception or mislabeling, or designed to prevent the marketing of produce which is unwholesome or which would fail to give consumer satisfaction.

All emergency standards issued under the provisions of this section, before they may become effective, shall be published in one or more newspapers, trade papers, or industry publications deemed best adapted to give notice to interested persons, together with a notice of the time and place for hearing objections. Such hearing shall be not less than 10 nor more than 20 days from the date of publication. Notice of hearing shall be mailed not less than 10 days prior to the date of the hearing to all persons who theretofore have filed with the director a request for notice of such hearings. If at the hearing it shall be developed by competent testimony that additional time will be required to produce further essential evidence the director shall continue the hearing to a date which will allow sufficient time for the production of such evidence. At the hearing, interested parties shall be heard and a record kept of the proceedings for determination by the director of the facts shown at the hearing. The director, upon his findings on the facts shown at the hearing, shall rescind, modify or affirm the emergency standards as published; and such emergency standards [fol. 92] shall take effect on the day appointed therefor, and shall continue in effect until suspended or rescinded by the director, or until the ninety-first day after adjournment of the next regular session of the Legislature, whichever first occurs.

Emergency standards may be amended, suspended, or rescinded upon notice and hearing in the same manner as provided for the establishment of such standards."

Cal. Agr. Code, Sec. 792, provides:

"Avocados shall be free from all defects, including but not restricted to those hereinafter mentioned, which singly or in the aggregate cause a waste of 10 per cent or more by weight, of the entire avocado, including the skin and seed. Not more than 5 per cent, by count, of the avocados in any one container or bulk lot may be below the foregoing requirement.

'Defect' includes damage due to insect injuries, freezing injury, decay, rancidity, or other causes.



All avocados, at the time of picking, and at all times thereafter, shall contain not less than 8 per cent of oil, by weight of the avocado excluding the skin and seed."

Cal. Agr. Code, Sec. 830.1, provides:

"The enforcing officer may, and when requested by an enforcing officer of the county of destination shall, affix a warning notice to any vehicle or other means of transportation, or to any load or lot, of fruits, nuts, or vegetables which do not conform to the standards established by this chapter, whether or not exempt from such standards, and serve a disposal order upon the owner or person having custody or possession of any such load or lot.

The warning notice, the disposal order directing the [fol. 93] proper disposition of such products, and the disposal order receipt to be signed by an enforcing officer at destination confirming such disposition shall be in the form specified by and provided by the director.

The enforcing officer at the point of destination of such load or lot shall determine that the load or lot has been delivered to the consignee at the destination specified in the order and shall thereupon release the load or lot and countersign the disposal order receipt so given to him. He shall immediately forward the receipt to the enforcing officer who served the disposal order."

Cal. Agr. Code, Sec. 831, provides:

"The violation of any of the provisions of this chapter is a misdemeanor and punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not more than six months, or by both."

[fol. 94] Cal. Agr. Code, Title 3, Sec. 1366.2, provides:

*"Disposition at Inspection Stations of Lots or Loads Which Fail to Comply."*

(a) Produce which fails to comply and which has originated in California may go to a location in California (not out-of-state) under proper written authorization of

the enforcement officer, provided it goes to a specified person or firm at that location, and that legal disposition at destination is performed under the direction of an enforcement officer at destination.

(b) Produce which fails to comply, and which originated outside California, may go to an out-of-state location; (1) if the lot or load returns to an out-of-state destination, or (2) proceeds through California, without unloading, to an out-of-state destination; in these two instances reconditioning or remarking is not necessary. However, if such load or lot of produce is to proceed to a California destination, it may do so only under proper written authorization of the California enforcement officer, and provided the destination is a specified person or firm at a California location, and that legal disposition at destination is performed under the direction of an enforcement officer at said destination.

In the case of (2) above of this section, such load or lot may be transported through California only under proper written authorization of the California enforcement officer, and provided an enforcement officer at the border station at the exit location is notified.

(c) A rejected lot or load may be reconditioned or remarked, whichever is necessary to provide compliance, at the station, provided this is accomplished within a reasonable time specified by the enforcement officer, and when reconditioned, the lot is again submitted for inspection."

[fol. 95] Cal. Adm. Code, Title 3, Sec. 1397, provides:

*"Avocados, Freezing Injury.* Discoloration due to freezing shall be considered to be a defect causing a waste of 10 percent or more, by weight, of the entire avocado, including skin and seed if:

(a) A brown color is apparent on any amount of the outside surface of the skin, and there is a discolored ring or layer of flesh adjacent to the skin, which has a water-soaked appearance, and this ring or layer extends over an area equal to 10 percent or more of the surface of the avocado; or

(b) Abnormal and distinct discoloration or desiccation of the flesh occurs on a transverse cut made through the blossom end of the fruit at the base of the seed, or through the neck of the fruit at a point at least one inch from the stem end, or on either such cut surface if it covers an aggregate area of (1) not less than  $5/16$  of an inch in diameter when applied to an avocado weighing 5 ounces or less, including skin and seed, or (2) not less than  $1/2$  of an inch in diameter when applied to an avocado weighing more than 5 but less than 10 ounces, including skin and seed, or (3) not less than  $3/4$  of an inch in diameter when applied to an avocado weighing 10 ounces or more, including skin and seed; or

(c) Fifteen or more bundles of fibres (spots) which are black appear on either surface of a transverse cut made through the fruit at a point  $1/2$  the distance between the stem end and the distal end of the fruit. (Rev. 5/57)"

Cal. Adm. Code, Title 3, Sec. 1397.1, provides:

*"Avocados, Number of Avocados to Select to Inspect for Frost Damage.* The number of containers of avocados from which fruit is to be sampled is provided in Section 1367, [fol. 96] California Administrative Code. The following is in addition to the above-named section:

(a) When it is evident from the outside appearance of the avocados in the lot that freezing damage has occurred to the avocados, a random sample is not necessary.

(b) When freezing damage is not evident from the outside appearance of the avocados in a lot, the following method shall be used:

(1) When 5 containers or less are selected, inspect 10 avocados which have been selected at random from all containers in the sample. If 1 of these fruits is considered rejectable under Section 792 of the Agricultural Code, and Section 1397 of the Administrative Code, inspect an additional 10 avocados selected from the same containers in the same manner. When more than 5 percent, by count, of these 20 fruits are considered rejectable, the lot shall be considered in violation.

(2) When 6 or more containers are selected, inspect 20 avocados which have been selected at random from all containers in the sample. When more than 5 percent, by count, of these 20 fruits are considered rejectable, the lot shall be considered in violation.

(3) When avocados have been sized, each size must be tested as a separate lot; when not sized, test large, medium and small fruits as separate lots.

(c) When avocados have been selected under method (a), the fruit, or the results of testing them, shall not be combined in any way with those selected to be tested under method (b). (Rev. 5/57)"

Cal. Adm. Code, Title 3, Sec. 1397.5, provides:

*"Avocados, Determination of Oil Content.* The method of [fol. 97] determining oil content in avocados shall be the method as described in the 'Official Method for the Determination of Oil in Avocados', issued by the Bureau of Chemistry of the State Department of Agriculture, and published in the 1st quarterly, 1955 Bulletin of the State of California, Department of Agriculture, Volume XLIV, Number 1."

Cal. Adm. Code, Title 3, Sec. 1397.6, provides:

*"Avocados, Sample for Maturity Test.* The number of containers to be selected from any lot of avocados for the purpose of making a maturity test shall be as follows:


Amount	Sample Containers
50 containers or less	2
51 to 100	3
101 to 200	4
201 to 300	5
301 to 400	6
401 to 500	7
501 to 800	9
800 and up	10

From each sample container select the least mature appearing avocado, provided the sample for testing shall be at least 5 fruits; if there are less than 5 containers as the number of containers required, more than 1 avocado will need to be selected from some of the containers.

From the sample fruits selected for testing, individually test the 3 least mature appearing avocados. When 2 of these 3 tests are 8 percent oil or better, and 1 of the tests shows less than 8 percent but not below 7.5 percent, 2 additional least mature appearing avocados from the sample shall be tested.

In order to allow for variations incident to the sampling and testing procedure, no lot shall be considered as failing to meet the maturity requirements when only 1 avocado of the sample tests less than 8 percent oil, provided said low-[fol. 98] test fruit does not test below 7.5 percent oil, and the other fruits in the sample each show 8 percent oil or better. (Rev. 5/57)"

## EXHIBIT TO MOTION

(See opposite) 



REPRINT FROM

# THE BULLETIN

## DEPARTMENT OF AGRICULTURE

### STATE OF CALIFORNIA

VOL. XLIV

JANUARY-FEBRUARY-MARCH, 1935

NUMBER 1

## OFFICIAL METHOD FOR THE DETERMINATION OF OIL IN AVOCADOS

(Revised 1954)

RAYMOND H. SWEET, Chemist.

Bureau of Chemistry, California Department of Agriculture

Section 792 of the Agricultural Code of the State of California provides, in part: "All avocados, at the time of picking, and at all times thereafter, shall contain not less than 8 percent of oil, by weight of the avocado excluding the skin and seed." The maturity of an avocado is of considerable importance; an avocado of insufficient maturity is likely to shrivel and rot while softening and will lack the desirable flavor found in more mature fruit. Appraising the maturity of an avocado by visual inspection is of some importance but even expert judgment fails in many instances. Factors considered in such inspection are general ground color, number and nature of surface spots, conditions of stem, and when cut the thickness and color of seed coat and condition of seed. Growing conditions in the orchard at time of picking are of some importance, too.

The primary standard method for measuring the oil in avocados is by ethyl ether extraction from the dried avocado pulp in a Soxhlet extractor. This method is time-consuming and involves direct weighing of the oil. In 1928 Lesley and Christie<sup>1</sup> described a shorter method, calibrated against results obtained by ether extraction, for more rapid determination of the oil content of avocados. This method involves grinding the fresh avocado pulp with Halowax oil (technical monochloronaphthalene) and measuring the refractive index of the avocado oil and the Halowax oil mixture. The index thus obtained is given meaning by a parallel determination of oil content by actual ether extraction. By obtaining a series of such values and constructing a graph each small change in refractive index could be represented by the proper change in percent oil.

The work of Lesley and Christie<sup>1</sup> was brief and rather incomplete. In 1949 A. F. Shannon<sup>2</sup>, after considerable work and research in collaboration with a Bureau of Chemistry Staff member, revised the oil content-refractive index chart published in *The Bulletin*<sup>2</sup> and this appears now as Table 1 in this publication. The method established for ether extraction is also described in the A. F. Shannon paper<sup>2</sup>.

### APPARATUS AND SOLUTIONS REQUIRED

Portable food chopper with nut butter cutter (fine) blade or Acme Safety Grater

Power grinder, type Figure (1) or type Figure (2)

Grinding Shell with two steel balls

Spatula (small)

Knife, three-inch blade

Pipette, 5 ml. (all glass automatic type may also be used)

Filter paper (soft), drip coffee maker type

Halowax oil No. 1000, Fisher Scientific Company or equivalent

Ethyl ether

Tweezers

Abbe type refractometer and attachments (water circulated)

Lens light or suitable instrument light

Large watch glass or pie tin

Balance, sensitive to 10 milligrams, capacity 5 to 100 grams

Small electric heater or hot water bath

**Halowax Oil.** The index of refraction of different lots of Halowax oil may vary as much as 0.002 and may also change with age or exposure to light. The index of refraction of each lot used should be

obtained and corrected to 25 degrees C. as described below under "Calculation—Halowax Oil Correction."



FIGURE 1. Power grinder type 1 removed from drum housing showing grinding shells in position. Operating time 10 minutes per sample. Specifications available from California Department of Agriculture.

#### Power Grinders.

The later type grinder shown in Figure 1 has faster action than grinders formerly used and an operating time of 10 minutes has been found sufficient for the hardest fruits encountered. If the type in Figure 2 is used, 15 minutes operation is recommended.

#### Grinding Shells.

Shell material of monel is preferred; steel balls should be

well seated at the ends of cylinder. The cylinder seals must be protected from damage and reground when necessary to form an excellent seal. The steel balls should be one-eighth inch less in diameter than the shell cylinder. Complete specifications for construction of grinding shell may be obtained from California Department of Agriculture.



FIGURE 2. Power grinder type 2 showing one grinding shell in position. Operating time 15 minutes per sample. Specifications available from California Department of Agriculture.

#### PREPARATION OF SAMPLE

**Sample Preparation Using Portable Food Chopper.** Dice to about one-half inch cubes the entire fruit excluding the skin, seed and seed coat. This may be facilitated by first quartering the fruit lengthwise. After thoroughly mixing the cubes, transfer all or a portion (size of fruit determining) of the mass slowly through a clean and dry food chopper. Careful operation will prevent juices from being lost. Collect the pulp on a pie tin or suitable dish. Thoroughly mix the pulp and as rapidly as possible weigh 5 grams to the nearest 10 milligrams on a piece of soft filter paper in a weighing dish. Filter papers used in drip coffee makers are satisfactory. Transfer the weighed sample together with filter paper into the special grinding shell containing one ball bearing. Wipe the weighing dish with a piece of soft filter paper and place this into the shell, followed by the second ball bearing. Pipette exactly 5 ml. of Halowax oil into the shell. Keep shell in vertical position until cap is fastened tightly with wrench to avoid leakage.

**Sample Preparation Using Acme Safety Grater.** Clean and dry the grater. Cut the avocado lengthwise into homologous (mirror image) halves. A portion of the skin and seed coat on one-half along the larger perimeter is removed and the cut face pressed and moved in a rotary manner across the grater until a fair amount of the avocado pulp is collected on a pie tin or suitable dish below. Always see that depth of grating is equal from stem to calyx end of half-section. After thoroughly mixing the pulp, weigh 5 grams, transfer to the grinding shell, and add exactly 5 ml. Halowax oil as described in the preceding paragraph.

#### TREATMENT OF THE FIVE GRAM SAMPLE IN SHELL

Clamp the shell containing the 5 gram sample and 5 ml. Halowax oil into the power grinding machine. Operating periods for the different

types of shaker devices differ but in any case the resulting paste formed in the shell should be a smooth uniform paste. Upon any evidence of incomplete maceration the sample should be discarded. Large chunks in the weighed pulp may often cause this condition.

Transfer the bulk of the mixture by means of a small spatula to a pie tin or large watch glass and squeeze out the liquid by pressing and kneading with the spatula. The separation is facilitated by gently heating for a short period on a hot water bath. Extended heating must be avoided because Halowax oil is appreciably volatile at the temperature of a hot water bath.

Cool the oil mixture and transfer a few drops to the refractometer prism. Avoid touching hard objects to the prism surface. Follow operating instructions for make of instrument used. Refractometer temperature should have been previously stabilized to 25 degrees C. by means of water circulating through the instrument. A constant temperature circulating system is convenient if available.

Read the index of refraction of the Halowax oil mixture to the fourth decimal figure.

### CALCULATIONS

**Temperature Correction:** If the reading is taken at any temperature other than 25 degrees C. a correction must be applied by adding 0.0004 for every full degree above 25 degrees C. or subtracting 0.0004 for every degree below 25 degrees C. Fractions of a degree to the nearest one-fourth should be compensated accordingly.

**Halowax Oil Correction:** If the index of refraction of Halowax oil used is less than 1.6353 the difference is added to the reading on the sample; if greater the difference is subtracted from the refractometer reading. The resulting figure is "corrected refractive index." With use of this corrected reading obtain the percent oil in avocado from the table.

#### Sample Calculation

Reading obtained on refractometer at 24.5 degrees C. = 1.6155

Temperature correction = - 0.0002

Reading corrected to 25 degrees C. = 1.6153

Index of refraction of Halowax oil used corrected to 25 degrees C. = 1.6348

Standard correction = (1.6353 - 1.6348) = 0.0005 to be added

Final "corrected refractive index" = (1.6153 + 0.0005) = 1.6158

Reference to Table 1 shows this figure corresponds to 12.1 percent oil in the avocado under examination.

### CLEANING OF REFRACTOMETER.

The prism surfaces of the refractometer should be cleaned after each determination by first wiping gently or blotting with either lens paper, clean cotton or softest facial tissue; then clean with another piece soaked in ether and finally wiping clean with a third piece such that the surface of the measuring prism appears bright.

# CHANGE IN REFRACTIVE INDEX OF HALOWAX OIL CAUSED BY THE AVOCADO OIL EXTRACTED

(Based on Halowax Oil Nd. 1.6353 at 25 Degrees C.)

Corrected refractive index	Percent oil	Corrected refractive index	Percent oil	Corrected refractive index	Percent oil
1.6281	4.0	1.6218	8.0	1.6159	12.0
.6280	4.1	.6216	8.1	.6158	12.1
.6278	4.2	.6214	8.2	.6157	12.2
.6277	4.3	.6213	8.3	.6155	12.3
.6275	4.4	.6211	8.4	.6153	12.4
.6273	4.5	.6210	8.5	.6152	12.5
.6272	4.6	.6208	8.6	.6151	12.6
.6270	4.7	.6207	8.7	.6149	12.7
.6269	4.8	.6205	8.8	.6148	12.8
.6267	4.9	.6204	8.9	.6146	12.9
1.6265	5.0	1.6202	9.0	1.6145	13.0
.6264	5.1	.6201	9.1	.6143	13.1
.6262	5.2	.6199	9.2	.6142	13.2
.6260	5.3	.6198	9.3	.6141	13.3
.6259	5.4	.6196	9.4	.6139	13.4
.6257	5.5	.6195	9.5	.6137	13.5
.6255	5.6	.6193	9.6	.6136	13.6
.6254	5.7	.6192	9.7	.6135	13.7
.6252	5.8	.6190	9.8	.6133	13.8
.6250	5.9	.6189	9.9	.6132	13.9
1.6249	6.0	1.6187	10.0	1.6131	14.0
.6247	6.1	.6186	10.1	.6129	14.1
.6245	6.2	.6184	10.2	.6127	14.2
.6244	6.3	.6183	10.3	.6126	14.3
.6243	6.4	.6182	10.4	.6125	14.4
.6241	6.5	.6180	10.5	.6123	14.5
.6239	6.6	.6179	10.6	.6121	14.6
.6237	6.7	.6178	10.7	.6120	14.7
.6236	6.8	.6176	10.8	.6118	14.8
.6234	6.9	.6175	10.9	.6117	14.9
1.6232	7.0	1.6173	11.0	1.6116	15.0
.6231	7.1	.6172	11.1	.6115	15.1
.6229	7.2	.6171	11.2	.6113	15.2
.6228	7.3	.6169	11.3	.6111	15.3
.6226	7.4	.6168	11.4	.6110	15.4
.6225	7.5	.6166	11.5	.6109	15.5
.6223	7.6	.6165	11.6	.6107	15.6
.6222	7.7	.6163	11.7	.6106	15.7
.6220	7.8	.6162	11.8	.6105	15.8
.6219	7.9	.6161	11.9	.6103	15.9

## REFERENCES

- (1) B. E. Lesley and A. W. Christie, Ind. Eng. Chem. Anal. Ed., Vol. 1, No. 1 (1929) p. 24.
- (2) A. F. Shannon, Bulletin, Calif. Dept. of Agriculture, Vol. XXXVIII, No. 3, (1949) p. 127.
- (3) Bulletin, Calif. Dept. of Agriculture, Vol. XXXVI, No. 1, (1947) p. 20.

O

[fol. 104] Affidavit of Service by Mail (omitted in printing).

[fol. 105] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

[Title omitted]

No. 7648 Civil Action

NOTICE OF AND MOTION FOR DISMISSAL OR ALTERNATIVELY FOR  
STAY OF PROCEEDINGS AS TO SOUTH FLORIDA GROWERS AS-  
SOCIATION, INC.—Filed March 14, 1958

To: Plaintiff, South Florida Growers Association, Inc. and

To: Isaac E. Ferguson, Esq., Its Attorney:

You, And Each Of You, Will Please Take Notice that on  
Monday, April 7, 1958, at 10:00 o'clock a.m., or as soon  
thereafter as counsel may be heard, the defendants above  
named will move the above-entitled Court for its order  
dismissing the above-entitled action as to said plaintiff on  
the following grounds:

I

That plaintiff's complaint fails to allege facts showing a  
cause of action as to said plaintiff within the equity juris-  
[fol. 106] diction of the Federal District Court.

II

That this Honorable Court lacks jurisdiction of this suit  
as to said plaintiff for failure of the complaint to state  
facts showing that the matter in controversy exceeds the  
sum or value of \$3,000, exclusive of interests and costs  
within the purview of 28 U. S. C. 1331.



### III

That this Honorable Court lacks jurisdiction of this suit as to said plaintiff for failure of the complaint to state facts showing that the action or proceeding arises under any Act of Congress regulating commerce within the purview of 28 U. S. C. 1337.

### IV

That the plaintiff South Florida Growers Association, Inc.'s complaint fails to state a claim against these answering defendants upon which relief can be granted.

### V

That should this Honorable Court retain jurisdiction it should hold the case as to said plaintiff in abeyance pending an authoritative interpretation of the challenged California statutes and regulations by the California courts.

Defendants' motion to dismiss is based on the pleadings, papers and documents on file with the Court, the affidavits filed herewith, the transcript of Deposition of Harold E. Kendall, and the points and authorities stated herein, and the answers to written interrogatories which have been served upon a principal officer of the plaintiff corporation, when said answers have been filed with this Honorable Court.

Edmund G. Brown, Attorney General of the State of  
California, John Fourt, Deputy Attorney General,  
By John Fourt, Attorneys for Defendants.

[fol. 108]

## POINTS AND AUTHORITIES IN SUPPORT OF MOTION

## Jurisdiction and Status of Case

Plaintiff South Florida Growers Association, Inc. is a Florida corporation engaged in the business of marketing avocados and other agricultural products grown in Florida. (Plfs. Complaint, Par. 1; Deposition of Kendall, Tr. 159.) By its complaint filed in the District Court of the United States for the Northern District of California, Northern Division, on November 13, 1957, this plaintiff seeks an injunction to restrain the enforcement of section 792, Agricultural Code of California. The complaint names as defendants Goodwin J. Knight, Governor, Edmund G. Brown, Attorney General, and W. C. Jacobsen, Director of Agriculture, of the State of California.

Plaintiff invokes the jurisdiction of the court under 28 U. S. C. sections 1331 and 1337 and also prays that the case be heard and determined by a three-judge court as provided by 28 U. S. C. sections 2281 and 2284.

In its complaint the plaintiff South Florida Growers Association, Inc., attacks the constitutionality of section 792 of the Agricultural Code of California.<sup>1</sup> Plaintiff centers its constitutional attack on the part of section 792 which provides:

"All avocados, at the time of picking, and at all times thereafter, shall contain not less than 8% of oil, by weight of the avocado excluding the skin and seed."

The requirement that avocados contain not less than 8% [fol. 109] oil was first enacted as part of the Agricultural Code of California in 1925 (Ch. 350, Calif. Stats. 1925).

Plaintiff asserts that the enforcement of section 792 of the Agricultural Code, when applied to prohibit delivery and sale in California of avocados grown in Florida and shipped in interstate commerce, offends the Commerce

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<sup>1</sup> Copies of California statutes and administrative regulations cited herein are attached hereto as Exhibit "B" to defendants' Motion to Dismiss the complaint of plaintiff Florida Lime and Avocado Growers, Inc.

Clause (Article 1, section 8, clause 3) and the Equal Protection Clause (Fourteenth Amendment, section 1) of the Constitution of the United States. (Plfs. Complaint, Pars. XXIX, XXX.)

#### STATEMENT

Plaintiff South Florida Growers Association, Inc. was organized in 1953. (*Id.*, Par. 1.) From 1939 to 1953 the same business was operated as a partnership under the name of Florida Growers Association. (*Ibid.*) It is engaged in the business of marketing avocados and other agricultural products grown in Florida. (*Ibid.*; Deposition of Kendall, Tr. 160.) Between 1939 and 1954 this plaintiff did not market avocados in California. (Deposition of Kendall, Tr. 169.) It commenced marketing Florida avocados in California in October, 1954. (*Ibid.*)

In each of the crop years since 1954-1955 this plaintiff has handled approximately 35% to 40% of the avocados grown and marketed in Florida, viz.: 1954-55, 166,818 bushels; 1955-56, 206,308 bushels; 1956-57, 144,048 bushels; 1957-58, to October 23, 1957, 74,500 bushels, and estimated for the remainder of the 1957-58 season 100,550 bushels. (Plfs. complaint, par. XIV.) The estimated value of the avocados handled and to be handled by this plaintiff in the 1957-58 season is approximately \$800,000. (*Ibid.*)

Of the total of 698,802 bushels of avocados handled by plaintiff South Florida Growers Association, Inc., beginning with the crop year 1954-1955, 34,905 bushels have been sold in California. (Plfs. Ex. 19; Deposition of Kendall, Tr. 201.) Thus the California sales represent only 4.99% [fol. 110] of the total. Moreover, the marketing of avocados is only one phase of this plaintiff's business, apparently not even a major phase. (Deposition of Kendall, Tr. 159-160; Objections to Defendants' Interrogatories Propounded to Harold E. Kendall and Fred Piowaty, filed with the Court, p. 3.)

Only a small fraction of Florida avocados shipped to California fail to comply with California's standardization laws. (Affidavit of S. R. Whipple, Assistant Chief, Bureau of Fruit and Vegetable Standardization, California De-

partment of Agriculture, Exhibit "A" hereto.) The percentage of all Florida avocados so failing to comply during the past four marketing seasons is as follows:

Marketing Season	Total Quantity Shipped into California, in Flats	Percent- age Failing to Comply
Oct. 1, 1954-Sept. 30, 1955	58,500	1.01%
Oct. 1, 1955-Sept. 30, 1956	62,400	16.4%
Oct. 1, 1956-Sept. 30, 1957	83,200	2.4%
Oct. 1, 1957-Dec. 31, 1957	26,000	5.9%
	Total Average	6.4%

(*Ibid.*)

Upon arrival of a lot of Florida avocados at a terminal market in California, the avocados are inspected by County Agricultural Commissioner inspectors for defects such as insect damage, freezing injury, decay, and rancidity and for oil content (secs. 782, 792, Calif. Agr. Code; secs. 1397, 1397.1, 1397.5, 1397.6, Title 3, Calif. Adm. Code). When the lot of avocados is found not to comply with state standards, the owner or person in possession may recondition the lot by removing the noncomplying fruit (sec. 785, Calif. Agr. Code). If the owner or person in possession prefers, he may obtain a release of the lot in order that he may market the avocados without the state (secs. 785, 830.1, Calif. Agr. Code; 3 Calif. Admin. Code 1366.2; Plfs. Com-[fol. 111] plaint, Par. XXVI). Mere possession of a lot of avocados which fail to comply with the standards of quality imposed by the California Agricultural Code does not constitute a violation of law (17 Ops. Cal. Atty. Gen. 154, April 20, 1951; secs. 784-785, Calif. Agr. Code). Thus plaintiff exposes itself to no criminal or civil liability by virtue of shipping Florida avocados into the State of California, even though such avocados do not comply with state law.

If the owner or person in possession, after receiving written notice of the noncompliance of the lot of avocados, chooses neither to recondition nor to dispose of the lot out-

side the state, the inspecting official files a petition in a California court requesting a court order that the non-complying lot be abated as a nuisance (sec. 785, Calif. Agr. Code). The court may in its discretion order the lot released, or that it be reconditioned, or that it be disposed of under conditions imposed by the court (sec. 785, Calif. Agr. Code). The owner or person in possession may also file a petition requesting a summary court order that the lot be released to him (sec. 785, Calif. Agr. Code). Only if the owner or person in possession of the noncomplying avocados attempts to sell them to a retailer without inspection, or sells them after receiving notice of the non-compliance and without reconditioning the lot, would a violation occur. Enforcement action by the State could take the form of either a civil action for penalties equaling the value of the fruit, or for misdemeanor criminal action for fine not exceeding \$500.00, or six months' imprisonment (Sees. 784, 785, 785.6, 831, Calif. Agr. Code).

Plaintiff South Florida Growers Association, Inc., has not taken advantage of the opportunity to recondition lots of noncomplying avocados. (Plfs. Complaint, Par. XXIV.) Nor is there any evidence that this plaintiff corporation has sold a noncomplying lot in California. Rather, this [fol. 112] plaintiff has followed the practice of shipping lots that fail to pass California's oil content inspection to neighboring markets outside California, thereby avoiding any violation of California law. (Plfs. Complaint, pars. XXIV, XXVII.)

Plaintiff South Florida Growers Association, Inc. alleges that it is suffering "great economic detriment and irreparable loss" as a result of the California statute. (Plfs. Complaint, Par. XXXI.) Plaintiff measures this alleged damage by the reduction in anticipated gross return on noncomplying lots reshipped to markets outside California. (Plfs. Complaint, Pars. XXVI, XXVII.) Thus Harold E. Kendall, president of plaintiff South Florida Growers Association, Inc., testified on deposition in January, 1958, that in the four years his company had been marketing avocados in California, seven shipments had failed to pass the California oil content inspection. (Deposition of Ken-

dall, Tr. 175-176.) Mr. Kendall introduced Plaintiffs' Exhibit 17 summarizing these seven shipments. (*Id.* at 176.) Exhibit 17 reflects that in the seven shipments 2311 lugs were rejected and reshipped to other markets at a reduction in anticipated gross return of \$2226.47. The Exhibit summarizes the seven shipments as follows:

Date	Total Shipments in Lugs	Number of Lugs Rejected	Reduction from Anticipated Gross Return on Entire Shipment
11/10/54	449	118	\$ 59.85
11/11/54	1300	529	394.20
11/12/54	650	97	75.39
11/18/54	650	72	24.89
11/16/55	677	282	210.62
11/29/56	1550	721	821.62
11/14/57	1795	492	639.90

The 2311 lugs of avocados which were rejected in these seven shipments represent only 1.84% of the total of [fol. 113] 34,905 bushels of avocados marketed by plaintiff in California during the four seasons in question.<sup>1</sup> Moreover, as noted above (see pp. 5-6 *supra*), shipments to California represent only 4.99% of plaintiff's total avocado sales during the four seasons beginning with the 1954-1955 season. This means that the 2311 lugs which failed to pass California's challenged oil content test represent a mere .09% of this plaintiff's total avocado sales during the four crop years in question. And avocados are only one phase, not necessarily even a major phase, of this plaintiff's business. (See p. 6 *supra*.)

<sup>1</sup> To compute this percentage, bushels have been converted to lug box equivalents. (3.6 lug boxes = 1 bushel.)



## ARGUMENT

### I. The Action Should Be Dismissed for Lack of Equity in the Bill.

#### A. A Federal Court of Equity Will Interfere with the Enforcement of State Laws Only in Exceptional Circumstances Where There Is a Threat of Great and Immediate Irreparable Injury.

This is an equitable action to enjoin state officials from enforcing a state criminal statute.

It is elementary that the power of a court of equity to act is a discretionary one. *American Federation of Labor v. Watson*, 327 U. S. 582, 593; *Pennsylvania v. Williams*, 294 U. S. 176, 185. Even though a court of equity has authority to hear and decide a case on the merits, it should not invoke its jurisdictional powers unless plaintiff has a cause of action in equity. *American Federation of Labor v. Watson*, 327 U. S. at 593; *Douglas v. Jeannette*, 319 U. S. 157, 162.

Plaintiff, in praying for an injunction restraining defendants as state officers from enforcing laws of California, [fol. 114] is seeking a remedy that a federal court of equity will grant only in "exceptional circumstances". *Spielman Motor Co. v. Dodge*, 295 U. S. 89, 95. There is a well recognized general policy of the federal courts against interfering with a state's enforcement of its own laws, even though unconstitutional. *American Federation of Labor v. Watson*, *supra*; *Douglas v. Jeannette*, *supra*; *Watson v. Buck*, 313 U. S. 387; *Beal v. Missouri Pac. R. Co.*, 312 U. S. 45; *Spielman Motor Co. v. Dodge*, *supra*. Federal courts are especially reluctant to interfere with the enforcement of state criminal laws. *Douglas v. Jeannette*, 319 U. S. at 163; *Spielman Motor Co. v. Dodge*, 295 U. S. at 95.

A plaintiff asking a federal court of equity to disturb the delicate balance of our federal-state relations by restraining state officers from the performance of their official acts must pass a "strict test" (*American Federation of Labor v. Watson*, 327 U. S. at 593); he must show that interference by the federal chancellor is necessary to prevent "irreparable injury" both "great and immediate". *Spielman Motor Co. v. Dodge*, 295 U. S. at 95. Otherwise,

plaintiff should first raise his constitutional issues in the state courts. *Ibid.*

This policy of caution on the part of federal courts of equity was stated by Mr. Justice McReynolds in *Fenner v. Boykin*, 271 U. S. 240, 243-244:

"Ex parte Young, 209 U. S. 123, and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with [fol. 115] the duty of prosecuting offenders against the laws of the state and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection. The Judicial Code provides ample opportunity for ultimate review here in respect of Federal questions. An intolerable condition would arise if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some Federal court. *Hygrade Provision Co. v. Sherman*, 266 U. S. 497, 500."

The same rule was articulated more recently by Mr. Chief Justice Stone in *Douglas v. Jeannette*, 319 U. S. 157, 162-164:

"The power reserved to the states under the Constitution to provide for the determination of controversies in their courts may be restricted by federal district courts only in obedience to Congressional legislation in conformity to the Judiciary Article of the Constitution. Congress, by its legislation, has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the state courts the trial

of criminal cases arising under state laws, subject to review by this Court of any federal questions involved. Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases [fol. 116] which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; and equitable remedies infringing this independence of the states—though they might otherwise be given—should be withheld if sought on slight or inconsequential grounds. *Di Giovanni v. Camden F. Ins. Asso.*, 296 U. S. 73, *Matthews v. Rodgers*, 284 U. S. 521, 525, 526, cf. *United States ex rel. Kennedy v. Tyler*, 269 U. S. 13, *Massachusetts State Grange v. Benton*, 272 U. S. 525.”

“It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. *Davis & F. Mfg. Co. v. Los Angeles*, 189 U. S. 207, *Fenner v. Boykin*, 271 U. S. 240. Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger of irreparable injury ‘both great and immediate’. *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89, 95, and cases cited; *Beal v. Missouri P. R. Corp.*, 312 U. S. 45, 49, and cases [fol. 117] cited; *Watson v. Buck*, 313 U. S. 387; *William v. Miller*, 317 U. S. 599.”

And Mr. Justice Cardozo stated the policy in this way:

"Only a case of manifest oppression will justify a federal court in laying such a check upon administrative officers acting *colore officii* in a conscientious endeavor to fulfill their duty to the state. A prudent self-restraint is called for at such times if state and national functions are to be maintained in stable equilibrium. Reluctance there has been to use the process of federal courts in restraint of state officials though the rights asserted by the complainants are strictly federal in origin. [Cases cited.]" *Hawks v. Hamill*, 288 U. S. 52, 61.

B. Plaintiff Has Failed to Meet the "Strict Test" of Great and Immediate Irreparable Injury.

It is readily apparent that there are not the exceptional circumstances in this case which would justify an exercise of this court's powers of equity. Plaintiff South Florida Growers Association, Inc. is not facing a danger of irreparable harm both great and immediate from the enforcement of California's 8% oil content law.

This plaintiff corporation conducts a substantial business marketing avocados and other agricultural products. (See p. 5, *supra*.) The marketing of avocados apparently is not even a major phase of this plaintiff's business. (See p. 6, *supra*.) Further, plaintiff's avocado sales in California represent on the average only 4.99% of its total avocado sales. (See pp. 5-6, *supra*.) The California statute is not preventing plaintiff from carrying on even this minor fraction of its total business represented by avocado sales in the remote California market. The seven lots rejected [fol. 118] since the 1954-1955 crop year represent only 1.84% of plaintiff's total shipments to California and .09% of all avocados handled by plaintiff during the period in question. (See pp. 8-9, *supra*.) Moreover, plaintiff has not attempted to recondition these lots so that they could be sold in California. (See p. 7, *supra*.)

Even if the California avocado market were totally unavailable to plaintiff, it does not appear that plaintiff's business would be seriously threatened. Plaintiff attempted

no California sales for the first 15 years of its existence, yet apparently grew and prospered. (See p. 5, *supra*.) There is no allegation that the entire crop of Florida avocados cannot be adequately marketed in the remaining 47 states. Cf. *Alabama v. Arizona*, 291 U. S. 286, 292. Indeed, since California is the nation's largest producer of avocados (Plfs. Complaint, Par. XV) and is distant from Florida, it is apparent that its importance as a market for plaintiff's avocados is inherently limited.

Thus we have this picture, when stated most favorably to plaintiff: As to one of its many products in one of its many markets it is inconvenienced but not prevented from doing business. This falls far short of irreparable injury both great and immediate. It perhaps would be more appropriate to characterize any such damages as "slight" and "inconsequential". *Douglas v. Jeannette*, 319 U. S., at 163.

Plaintiff is certainly suffering no greater inconvenience than the plaintiff in *Spielman Motor Co. v. Dodge*, 295 U. S. 89. There the plaintiff was seeking to enjoin enforcement of a state-adopted code of unfair competition regulating plaintiff's business practices as a retail dealer in automobiles. The Supreme Court held that the bill should have been dismissed for failure to state a case within the equitable jurisdiction of the District Court. The Court found an absence of a danger of irreparable harm both great and [fol. 119] immediate such as would constitute the exceptional circumstances which would justify an interference with the enforcement of state laws. Mr. Chief Justice Hughes, writing the opinion for a unanimous Court, stressed that plaintiff had a large business which could be continued under the statute without prohibition or serious interference. He stated:

"The bill alleged that appellant had a large business in buying and selling motor vehicles but the statute did not prohibit the continuance of that business and the bill gave no facts to show that the particular requirements of the Code, which were in question, would create such a serious interference as to require equitable relief." *Id.* at 96.

Plaintiff seeks to enjoin enforcement of a state statute. Yet it is questionable whether plaintiff South Florida Growers Association, Inc. has suffered any damages whatsoever from the enforcement or a threat of enforcement of the 8% oil content statute. The statute has not been enforced against the plaintiff, and, significantly, plaintiff has not alleged that defendants have threatened enforcement. This is understandable since plaintiff has not, evidently, sold any noncomplying avocados in California. Rather it has, voluntarily and without any court or administrative order, reshipped the noncomplying lots to markets outside California. If there was a reduction in plaintiff's gross return, it was a result of plaintiff's voluntary compliance with the law, rather than enforcement or threat of enforcement of the law. Any damage could not, therefore, be the result of any such enforcement or threatened enforcement. Defendants of course stand ready to perform their duties, but

"A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity." *Watson v. [fol. 120] Buck*, 313 U. S. 387, 400.

C. Plaintiff Should First Attack the Statute in the State Courts or by State Administrative Action.

In the complete absence of "exceptional circumstances" which would warrant equitable interference with state law enforcement, plaintiff

"should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection." *Fenner v. Boykin*, 271 U. S. 240, 244.

There would, of course, be opportunity for review of the federal issues by the United States Supreme Court. *Douglas v. Jeannette*, 319 U.S. 157, 167; *Spielman Motor Co. v. Dodge*, 295 U.S. 89, 95-96.

Plaintiff has had, for many years and yet today, ample opportunities in the California courts to challenge the



validity of the 8% oil content statute by an action for declaratory relief (sec. 1060, Calif. Code Civ. Proc.) or by petitioning for an order to show cause why a particular seized lot should not be released (sec. 785, Calif. Agr. Code). Plaintiff could expose itself to a nuisance action, a civil action for penalties, or a misdemeanor prosecution (secs. 784, 785, 785.6, 831, Calif. Agr. Code) simply by selling in California a single shipment of Florida avocados which have failed to comply with the 8% standard. In any such action plaintiff could challenge the constitutional validity of the statute by way of defense. *Douglas v. Jeannette*, *supra*; *Spielman Motor Co. v. Dodge*, *supra*.

Plaintiff could proceed in the state courts without any disruption of its normal business routine. By selling one noncomplying lot in California, plaintiff would subject itself to a single enforcement action, thereby avoiding the [fol. 121] danger of multiplicity of prosecutions. Cf. *Beal v. Missouri Pac. R. Co.*, 312 U.S. 45; *Spielman Motor Co. v. Dodge*, 295 U.S. 85.

Apparently plaintiff feels that it has a right to protection from a federal court of equity from even a single criminal prosecution in the state courts. But the contrary is true:

"No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for injunction." *Douglas v. Jeannette*, 319 U.S. 157, 163.

In addition to judicial remedies, plaintiff may have available an administrative remedy under state law. Plaintiff's alleged difficulties with meeting the California standard could be alleviated or entirely removed through action of the State Director of Agriculture in establishing emergency standards which supplement or supersede section 792 of the California Agricultural Code. The Director is authorized to promulgate such emergency standards by section 790.5 of the same Code. A remedy before a state admin-

istrative agency must be exhausted before resort may be had to the federal courts. *First National Bank v. Board of Commissioners*, 264 U.S. 450, 454.

**D. A Further Reason for Dismissing the Action Is the Presence of Unsettled Issues of State Law Which Could Moot the Constitutional Issues.**

A further reason why this federal court of equity should dismiss the bill and leave plaintiff to the state courts is the presence of antecedent state law issues which should be resolved by the state courts before the constitutional [fol. 122] issues are decided. *Douglas v. Jeannette*, 319 U.S. 157; *Beal v. Missouri Pac. R. Co.*, 312 U.S. 45; *Gregg v. Winchester*, 173 F.2d 512, *certiorari denied*, 338 U.S. 847; *Bradford v. Hurt*, 84 F.2d 722. In *American Federation of Labor v. Watson*, 327 U.S. 582, 595-596, the Supreme Court explained why federal courts of equity should avoid deciding constitutional issues which may become academic upon the resolution of issues of state law.

"As we have said, the District Court passed on the merits of the controversy. In doing so at this stage of the litigation, we think it did not follow the proper course. The merits involve substantial constitutional issues concerning the meaning of a new provision of the Florida constitution, which, so far as we are advised, has never been construed by the Florida courts. Those courts have the final say as to its meaning. When authoritatively construed, it may or may not have the meaning or force which appellees now assume that it has. In absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What would now be written on the constitutional questions might therefore turn out to be an academic and needless dissertation."

There are at least three issues of state law which plaintiff could and should present to the state courts. (See pp. 22-23, *infra*.) The resolution of any one of these issues in plaintiff's favor would moot the constitutional issues.

**E. Conclusion: The Bill Should Be Dismissed for Lack of Equity.**

The final evidence of the lack of equity in the bill is that the plaintiff has conducted its business for many years in the face of California's 8% oil content law without feeling [fol. 123] the need to seek relief from a federal court of equity. The statute was enacted in 1925. (See p. 4, *supra*.) Plaintiff began its business operations in 1939. (See p. 5, *supra*.) Not until 1954 did plaintiff begin marketing avocados in California. (See p. 5, *supra*.) And not until November 1957 did plaintiff seek relief from this federal court of equity. Any delay that might be occasioned by litigating the issues in the state courts would be insignificant when compared with the delay resulting from plaintiff's own inaction. The bill should be dismissed for lack of equity.

**II. Plaintiff's Complaint Fails to Show that the Matter in Controversy Exceeds the Sum or Value of \$3,000 Within the Purview of 28 U.S.C. 1331.**

Plaintiff South Florida Growers Association, Inc. asserts that its action is within the jurisdiction of the Court by virtue of 28 U.S.C. 1331 in that it arises under the commerce clause of Article 1, Section 8, and the equal protection clause of the United States Constitution, and that as to each plaintiff, the matter in controversy exceeds the value of \$3,000.00 (Plfs. Complaint, Par. III). In determining whether the requisite jurisdictional amount is in controversy, where it does not appear that the plaintiff is absolutely prevented by state law from conducting its business, the decisive question is not the value or net worth of the business but the value of the right to be free from regulation (*Kroger Grocery Co. v. Lutz*, 299 U.S. 300). Paragraph XXX, plaintiff's complaint, alleges that the California statute in question limits the California market for the avocados marketed by the plaintiff "at great economic detriment and irreparable loss" (Plfs. Complaint, p. 15, 11, 4-5). However, the complaint fails to state facts sufficient to warrant such legal conclusions. The complaint fails to allege any facts regarding the sustaining of any

[fol. 124] actual losses by the South Florida Growers Association, Inc., other than a general statement that some shipments "were rejected". (Plfs. Complaint, Par. XXVII.) It follows that this plaintiff has not alleged any facts in its complaint showing that the right to be free of regulation by section 792, California Agricultural Code, is of the value of \$3,000 within the jurisdictional prerequisites of 28 U.S.C. 1331.

### III. Plaintiff's Complaint Fails to Show that the Action or Proceeding Arises Under Any Act of Congress Regulating Commerce Within the Purview of 28 U.S.C. 1337.

Plaintiff's complaint alleges that section 792, California Agricultural Code, is unconstitutional when applied to avocados delivered for sale in interstate commerce in compliance with standards established by the Secretary of Agriculture, pursuant to the Federal Marketing Agreement Act of 1937 (Plfs. Complaint, Par. XXX). However, an analysis of the federal act discloses that it authorizes cooperative federal-state action in the field of agricultural marketing (7 U.S.C. 610[i]). Thus federal marketing orders may cover the same geographic area as a state regulation covering the same area and commodity without causing preemption of the field as a matter of law.

#### Federal Marketing Orders

Marketing Order Governing Dried Figs Produced in California, 7 C.F.R. 964

Marketing Order Governing Beurre d'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California, 7 C.F.R. 939

#### State Marketing Orders

Marketing Order for Dried Figs, issued effective July 22, 1953

Marketing Order for Fresh Fall and Winter Pears Grown in California, issued effective August 26, 1951

Marketing Order for Fresh Bartlett Pears, issued effective August 9, 1939.

In the instant case, however, there is not even geographic overlapping of federal and state legislative action

since the federal marketing order governing avocados grown in South Florida is applicable only to "the handling of avocados grown in the designated production area" of "the counties of Brevard, Osceola, Polk, Hillsborough, and Pinellas in the State of Florida, and all of the counties of that state situated south of such counties" (Plfs. Complaint, Ex. A; 7 C.F.R. 969[3], 969.4). This marketing order further provides that "The said order is limited in its application to the smallest regional production area that is practicable . . ." (Plfs. Complaint, Ex. A; 7 C.F.R. 969[3]). Under these circumstances, defendants respectfully submit that the Federal Marketing Agreement Act of 1937 does not invalidate state action in the field of agricultural marketing, and that as a matter of law the Secretary of Agriculture did not intend to preempt the field of avocado marketing regulation in promulgating the federal Florida Avocado Marketing Order. *Parker v. Brown*, 317 U.S. 341, 358; cf. *Townsend v. Yeomans*, 301 U.S. 441, *Reed v. Colorado*, 187 U.S. 137. It follows that plaintiff's allegations of conflict between the state and federal regulation of avocados stands as a mere colorable allegation which fails to comply with the requirement of 27 U.S.C.A. 1337. *Levering Co. v. Morrin*, 289 U.S. 103, 105; *Newburyport Water Co. v. Newburyport*, 193 U.S. 361.

IV. Alternatively, this Honorable Court Should Hold the Case in Abeyance Pending an Authoritative Interpretation of California Law by California Courts.

[fol. 126] Federal courts of equity in the exercise of a sound discretion should avoid passing on substantial constitutional issues concerning the meaning of California statutes and regulations which have never been construed by the California courts, *American Federation of Labor v. Watson*, 327 U.S. 582. When authoritatively construed, section 792, California Agricultural Code, may or may not have the meaning or force which plaintiff assumes that it has. In the absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What this Honorable District Court might decide on federal constitutional issues might hereafter turn out to be an academic and needless disser-



tation. *American Federation of Labor v. Watson*, 327 U.S. 582, 595-596.

There are present in this case issues of interpretation of California law which plaintiffs should raise before the Director of Agriculture, and in the California courts.

Plaintiff's complaint alleges that the matter in controversy is the right of plaintiff to market Florida avocados in California free from restriction of section 792, Agricultural Code (Plfs. Complaint, Par. III). This allegation raises the antecedent issue of state law whether this statute was intended by the California legislature to apply to avocados moving into California while in interstate commerce, or whether it was to apply only to sales of avocados in intrastate commerce. Cf. *Bourjois v. Chapman*, 301 U.S. 183. So far as defendants can ascertain, there are no California judicial decisions construing the reach of this statute. This question of statutory interpretation, which could moot the constitutional issues, can be determined with finality only by the California courts (*American Federation of Labor v. Watson*, 327 U.S. 582).

Plaintiff's complaint suggests another issue of state law which could be submitted to the California courts. This is [fol. 127] the issue whether California's avocado standardization law was intended by the state legislature to apply to avocados grown in another state and marketed pursuant to a Federal Marketing Order promulgated under the Agricultural Marketing Act of 1937.

Still a third issue of state law which plaintiff should present to the California courts is the validity under the California statute (sec. 782, Calif. Agr. Code) of the implementing regulation establishing the official method of securing samples from lots of avocados and the method of chemical analysis of oil content. (3 Calif. Adm. Code sections 1397.5, 1397.6.) Cf. *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496.

Defendants would endeavor in the state court to establish the validity of these regulations and statutes under state law and their applicability to plaintiff's avocados shipped from Florida. But defendants recognize that other possible interpretations exist and that plaintiff can and should present these questions to a state court before asking a federal court of equity to rule on speculative federal



constitutional questions. If plaintiff was successful in establishing its case in the state courts on these issues there would be no need for this Honorable Court to rule on the posed federal questions.

In light of these uncertain issues of state law, this Honorable Court should, if it does not dismiss the action, remit the parties to the California courts for resolution of the state law questions. *American Federation of Labor v. Watson*, 327 U.S. 582, *Chicago v. Fieldcrest Dairies*, 316 U.S. 168, *Railroad Commission v. Pullman Co.*, 312 U.S. 496, *East Coast Lumber Co. v. Babylon*, 174 F. 2d 106.

WHEREFORE, defendants respectfully pray that the complaint of the plaintiff, South Florida Growers Association, Inc. be dismissed or alternatively that the action be stayed [fol. 128] pending the resolution of issues of state law by the California courts.

Edmund G. Brown, Attorney General of the State of California,  
John Fourt, Deputy Attorney General,  
By John Fourt, Attorneys for Defendants.

[fol. 129]

EXHIBIT "A" TO MOTION

Affidavit of S. R. Whipple—March 3, 1958 (Copy)

Omitted. Printed side folio 83, page 79 ante.

[fol. 132] Affidavit of Service by Mail (omitted in printing).

[fol. 137] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

No. 7648 Civil Action

[Title omitted]

AMENDED ANSWER—Filed March 20, 1958

Come now W. C. Jacobsen, Director of Agriculture, State of California, Goodwin J. Knight, Governor of the State of

California, and Edmund G. Brown, Attorney General, State of California, and with leave of court first had and obtained file this their amended answer to plaintiffs' complaint as amended by interlineation, and for their causes of defense allege as follows:

### First Defense

That said complaint fails to state a claim against these answering defendants upon which relief can be granted.

[fol. 138]

### Second Defense

That the above-entitled court lacks jurisdiction over the subject matter set forth in plaintiffs' said complaint, or at all.

### Third Defense

That these answering defendants admit the allegations contained in paragraphs II, V, VI, VIII, IX, X, XI, XVII, XVIII, XIX, XX, and XXI of plaintiffs' said complaint; that these answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs I, VII, XII, XIII, XIV, XXII, XXIV(a), XXV and XXVII of plaintiffs' said complaint and on said ground deny the truth of each and every allegation contained in said paragraphs; that these answering defendants deny each and every allegation contained in paragraphs III, IV, XVI, XXIII, XXIV(b), XXVIII, XXIX, XXX, XXXI, and XXXII of plaintiffs' said complaint; that these answering defendants admit the allegations contained in lines 29 to 32, page 7, and lines 1 to 10, page 8, ending with "February," of paragraph XV of plaintiffs' said complaint, and deny each and every allegation contained in lines 10 to 19, page 8, beginning with "Thus" on line 10, page 8, and ending with "California" on line 19, page 8, of paragraph XV of plaintiffs' said complaint; that these answering defendants deny each and every allegation contained in paragraph XXVI of plaintiffs' said complaint excepting that defendants admit that they have in the past and now stand ready to perform their duties under their oath of office should they acquire knowledge of violations of the Agricultural Code of the State of California.

#### Fourth Defense

That the federal courts have adopted the salutary policy [fol. 139] of judicial self-restraint in suspending or enjoining enforcement of state statutes alleged to be unconstitutional on the ground that a complaint might be civilly or criminally prosecuted for violation of them, where the state court, which has the last word on the construction and meaning of the statute, has never passed upon the statute attacked. In the absence of a showing that the danger of irreparable loss is both great and immediate, plaintiffs herein should first set up the invalidity of the statute in the state court, even though the validity of the statute is challenged, since there is ample opportunity for ultimate review by the United States Supreme Court of federal questions after decision by the state court.

#### Fifth Defense

That the quality and maturity standards purportedly promulgated under Marketing Order No. 69, governing avocados grown in South Florida (19 F.R. 3439, 7 C.F.R. 969), the promulgation, and the methods and procedures used in the administration thereof, are unreasonable and arbitrary and are invalid in that they fail to comply with the requirements of the Marketing Agreement Act, of 1937, as amended (7 U.S.C.A. 601 et seq.).

#### Sixth Defense

That sections 784 and 792, California Agricultural Code, constitute a legitimate and proper exercise of the state police power and are intended to protect the public health by preventing the marketing of immature, unwholesome avocados which are unfit for human consumption, and to protect the general prosperity and welfare of the important California avocado industry by preventing the marketing of immature, unwholesome avocados, thus maintaining the industry reputation, and consumer and trade market [fol. 140] demand, for mature, wholesome, nutritious avocados.

WHEREFORE, defendants pray:

1. That the plaintiffs' said complaint be dismissed;
2. That sections 784 and 792, California Agricultural Code, be declared valid and subsisting statutes which are applicable to all avocados prepared, packed, placed, delivered for shipment, delivered for sale, loaded, shipped, transported or sold in bulk or in containers within the State of California;
3. That the defendants be granted such other relief in the premises as the court may deem just and proper;
4. That the court award to defendants their costs.

Dated: February 26, 1958.

Edmund G. Brown, Attorney General of the State  
of California, John Fourt, Deputy Attorney Gen-  
eral, By John Fourt, Attorneys for Defendants.

[fol. 174] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

No. 7648 Civil Action

[Title omitted]

ANSWERS OF HAROLD E. KENDALL, PRESIDENT OF PLAINTIFF  
SOUTH FLORIDA GROWERS ASSOCIATION, INC., TO DEFEN-  
DANTS' INTERROGATORIES—Filed April 8, 1958

Interrogatory No. 1: What was the net worth of South  
Florida Growers Association, Inc. as of the close of its  
last fiscal year, March 31, 1957?

Answer: \$18,255.64.

Interrogatory No. 2: What was the net worth of South  
Florida Growers Association, Inc. as of December 31, 1957?

Answer: No statement of net worth as of December 31,  
1957 is available, since no audit was made as of this date.

The accountants of the corporation, Bolger & Fisher of Miami, Florida, have advised me that it would be extremely difficult to make an estimate of net worth as of a date other than the close of a fiscal year, since there is not available an inventory as of such date, nor a list of accounts payable or of expenses accrued as of such date, nor sum-[fol. 175] mary of amounts receivable on sales and consignments, nor book entries or data from which taxes and overhead applicable to the period could be accurately estimated. The reason for using a fiscal year ending March 31st is that the business of the corporation reduces sharply after the middle of February, so that by March 31st there is a minimum of incompleting transactions. The accountants advise further that an audit, as of the end of a nine-months' period, would cost the corporation about \$1,500, merely to obtain a questionable estimate of net worth at that time.

Interrogatory No. 3: What were the gross receipts of South Florida Growers Association, Inc. from all business during the fiscal year ending March 31, 1955?

Answer: \$1,476,353.07.

Interrogatory No. 4: What were the gross receipts of South Florida Growers Association, Inc. from all business during the fiscal year ending March 31, 1956?

Answer: \$1,660,492.97.

Interrogatory No. 5: What were the gross receipts of South Florida Growers Association, Inc. from all business during the fiscal year ending March 31, 1957?

Answer: \$1,718,098.70.

Interrogatory No. 6: What were the gross receipts of South Florida Growers Association, Inc. from all business from April 1, 1957 to December 31, 1957?

Answer: No such figure is available and no dependable estimate could be made. (See answer to Interrogatory No. 2.)

Interrogatory No. 7: What were the gross receipts of [fol. 176] South Florida Growers Association, Inc. from the sale of avocados during the fiscal year ending March 31, 1955?

Answer: \$820,068.00.

Interrogatory No. 8: What were the gross receipts of South Florida Growers Association, Inc. from the sale of avocados during the fiscal year ending March 31, 1956?

Answer: \$993,409.00.

Interrogatory No. 9: What were the gross receipts of South Florida Growers Association, Inc. from the sale of avocados during the fiscal year ending March 31, 1957?

Answer: \$1,006,241.00.

Interrogatory No. 10: What were the gross receipts of South Florida Growers Association, Inc. from the sale of avocados during the period from April 1, 1957 to December 31, 1957?

Answer: No such figure is available and no dependable estimate could be made. (See answer to Interrogatory No. 2.)

Interrogatory No. 11: What were the gross receipts of South Florida Growers Association, Inc. from the sale of avocados in California during the fiscal year ending March 31, 1955?

Answer: \$78,905.31.

Interrogatory No. 12: What were the gross receipts of South Florida Growers Association, Inc. from the sale of avocados in California in the fiscal year ending March 31, 1956?

Answer: \$129,543.11.

Interrogatory No. 13: What were the gross receipts of South Florida Growers Association, Inc. from the sale of [fol. 177] avocados in California during the fiscal year ending March 31, 1957?

Answer: \$15,065.68.

Interrogatory No. 14: What were the gross receipts of South Florida Growers Association, Inc. from the sale of avocados in California during the period from April 1, 1957 to December 31, 1957?

Answer: \$11,861.78.

Harold E. Kendall

*Duly sworn to by Harold E. Kendall, jurat omitted in printing.*



[fol. 178]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

No. 7648 Civil Action

[Title omitted]

ANSWERS OF FRED PIOWATY, SECRETARY OF PLAINTIFF  
FLORIDA LIME AND AVOCADO GROWERS, INC., TO DEFEN-  
DANTS' INTERROGATORIES—Filed April 8, 1958

Interrogatory No. 1: What was the net worth of Florida Lime and Avocado Growers, Inc. as of the close of its last fiscal year, March 31, 1957?

Answer: \$100,760.64.

Interrogatory No. 2: What was the net worth of Florida Lime and Avocado Growers, Inc. as of December 31, 1957?

Answer: No statement of net worth as of December 31, 1957 is available, since no audit was made as of this date, but only at the close of the fiscal year on March 31, 1957. Affiant is advised by the company's accountants that a net worth figure as of December 31, 1957 could be approximated only by a complete audit of the company's financial condition on that date; that such audit would necessarily include qualifications as to various items not known or ascertainable [fol. 179] as of the end of a nine-months' period such as April 1, 1957 to December 31, 1957; that such audit would take about six weeks and cost about \$2,000, and could produce only an estimate that could not be verified.

Interrogatory No. 3: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from all business during the fiscal year ending March 31, 1955?

Answer: \$447,526.77.

Interrogatory No. 4: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from all business during the fiscal year ending March 31, 1956?

Answer: \$609,125.02.

Interrogatory No. 5: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from all business during the fiscal year ending March 31, 1957?

Answer: \$546,737.85.

Interrogatory No. 6: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from all business from April 1, 1957 to December 31, 1957?

Answer: \$399,657.99.

Interrogatory No. 7: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from the sale of avocados during the fiscal year ending March 31, 1955?

Answer: \$205,432.44.

Interrogatory No. 8: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from the sale of avocados during the fiscal year ending March 31, 1956?

Answer: \$323,143.93.

[fol. 180] Interrogatory No. 9: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from the sale of avocados during the fiscal year ending March 31, 1957?

Answer: \$233,358.46.

Interrogatory No. 10: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from the sale of avocados during the period from April 1, 1957, to December 31, 1957?

Answer: \$165,390.98.

Interrogatory No. 11: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from the sale of avocados in California during the fiscal year ending March 31, 1955?

Answer: \$94,553.62.

Interrogatory No. 12: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from the sale of avocados in California during the fiscal year ending March 31, 1956?

Answer: \$56,616.51.

Interrogatory No. 13: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from the sale of avocados in California during the fiscal year ending March 31, 1957?

Answer: \$26,332.53.

Interrogatory No. 14: What were the gross receipts of Florida Lime and Avocado Growers, Inc. from the sale of avocados in California during the period from April 1, 1957 to December 31, 1957?

Answer: \$13,906.66.

Fred Piowaty

[fol. 181] *Duly sworn to by Fred Piowaty, jurat omitted in printing.*

[fol. 201] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION  
No. 7648 Civil Action

FLORIDA LIME AND AVOCADO GROWERS, INC., a Florida corporation, and SOUTH FLORIDA GROWERS ASSOCIATION, INC., a Florida corporation, Plaintiffs,

vs.

W. C. JACOBSEN, Director of the Department of Agriculture of the State of California, GOODWIN J. KNIGHT, Governor of the State of California, and EDMUND G. BROWN, Attorney General of the State of California, Defendants.

JUDGMENT—January 13, 1959

This cause came on for hearing on April 18, 1958, on defendants' motion to dismiss the action because the plain-

tiffs' complaint failed to allege facts showing a cause of action within the jurisdiction of the United States District Court, and the court having heard the argument of counsel, both written and oral, and having considered the depositions, affidavits, and exhibits presented by the parties hereto in connection with the hearing thereof, and the court being fully advised, it is by the Court, this 13th day of January, 1959,

[fol. 202] Ordered that said motion be granted, and that the complaint be and it is hereby dismissed for want of jurisdiction for the reasons set out in the opinion of the Court filed herein on December 17, 1958, and that defendants recover their costs.

Dated: Jan. 13, 1959.

Sherrill Halbert, United States District Judge.

Entered in Civil Docket Jan. 13, 1959.

[fol. 219]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

[Title omitted]

MOTION OF PLAINTIFFS TO AMEND COMPLAINT BY NAMING  
PRESENT GOVERNOR AND ATTORNEY GENERAL AS DEFENDANTS, IN SUBSTITUTION FOR FORMER GOVERNOR AND ATTORNEY GENERAL—Dated February 2, 1959

The plaintiffs, Florida Lime and Avocado Growers, Inc. and South Florida Growers Association, by their undersigned attorney of record, move the court to grant leave to amend the plaintiffs' complaint: (1) by describing the defendant Edmund G. Brown as governor of the State of California, in lieu of attorney general, and (2) by naming the present attorney general of the State of California, Stanley Mosk, as a party defendant.

As grounds of this motion, plaintiffs represent to the court as follows:

1. Plaintiffs filed their complaint under sections 1331 and 1337 of the Judicial Code and prayed for a hearing of the case by a three-judge court pursuant to sections 2281 [fol. 220] and 2284 of the Judicial Code. Since the action involves the operation of a statute of the state of California, namely, section 792 of the Agricultural Code of California, and since section 2284(2) of the Judicial Code requires that notice of hearing of such an action be given to the governor and attorney general of the state, plaintiffs complied with this requirement by naming as co-defendants Goodwin J. Knight, then governor of California, and Edmund G. Brown, then attorney general of California, together with W. C. Jacobsen, director of the Department of Agriculture of California, and by causing service of summons to be made on said defendants.

2. Thereupon said defendants filed their joint answer to plaintiffs' complaint, also their joint motion for dismissal of the complaint or alternatively for an order staying the action pending resolution of issues of state law by the California courts. Upon hearing and consideration of said motion, the court filed its "Memorandum and Order" on December 17, 1958, and on January 13, 1959 entered its final judgment dismissing plaintiffs' complaint for want of jurisdiction and awarding costs to the defendants.

3. Plaintiffs have directed their attorney of record in this action to prosecute an appeal from said judgment to the Supreme Court of the United States, as provided by section 1253 of the Judicial Code, and in further compliance with section 2284(2) of the Judicial Code desire to give notice of such appeal to the present governor and attorney general of California.

4. On January 5, 1959 the term of office of Goodwin J. Knight as governor of California expired and Edmund G. Brown, having been duly elected as governor, took office as governor and still continues to hold said office. On the same day Stanley Mosk took office as Attorney General of [fol. 221] California, the term of office of Edmund G. Brown

as attorney general having expired and Stanley Mosk having been duly elected to said office, which he still holds.

5. There is substantial need for continuing this action against Edmund G. Brown in his present capacity as governor of California in lieu of his former capacity as attorney general, also substantial need to join as a party defendant the present attorney general, Stanley Mosk, (a) in order to facilitate service of notice on said governor and attorney general of the further proceedings in this action, in compliance with section 2284(2) of the Judicial Code, and (b) because said governor and attorney general, together with the defendant W. C. Jacobsen, who still holds office as Director of Agriculture of the State of California, are the chief officers of the state in charge of enforcement of section 792 of the Agricultural Code of California and are now continuing to enforce said statute, which plaintiffs aver to be in violation of the Constitution of the United States in the respects alleged in plaintiffs' complaint.

6. Since January 5, 1959 the present attorney general, Stanley Mosk, has participated in the proceedings in this case as attorney for the defendants, together with John Fourt, deputy attorney general.

Wherefore plaintiffs pray for leave to amend and supplement their complaint: (1) by changing the designation of the defendant Edmund G. Brown from Attorney General of California to Governor of California; (2) by adding as a party defendant the present Attorney General of California, Stanley Mosk; (3) by striking out the name of Goodwin J. Knight, the former governor, as a party defendant;—all proceedings in the case to stand as if said Edmund G. Brown had originally been designated in the [fol. 222] complaint as governor and as if Stanley Mosk had originally been named as attorney general.

Florida Lime and Avocado Growers, Inc. and South  
Florida Growers Association, Inc., Plaintiffs, By:  
Isaac E. Ferguson, Attorney for Plaintiffs.

*Duly sworn to by Isaac E. Ferguson, jurat omitted in printing.*



[fol. 223]

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

I.

Section 2284(2) of the United States Judicial Code (28 U.S.C.A. 2284 (2)) provides:

"If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State."

No particular form of such notice is specified. Notice to the governor and attorney general of all proceedings in the action is assured by joining them as parties defendant.

II.

Rule 15 of the Federal Rules of Civil Procedure provides that leave to amend a pleading shall be freely granted when justice so requires.

Subsection (d) of Rule 15 provides:

*"Supplemental Pleadings.* Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor."

III.

The substitution of parties prayed for in plaintiffs' motion is occasioned by the recent succession of Edmund G. Brown to the office of governor of California and succession of Stanley Mosk to the office of attorney general of [fol. 224] California, and such substitution of parties at any stage of the action is allowable under Rule 15 aforesaid.

United States v. Koike, 9 C.A., 164 F. 2d 155.

Respectfully submitted,

Isaac E. Ferguson, Attorney for Plaintiffs.

[fol. 231]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

Civil Action No. 7648

[Title omitted]

SPECIAL APPEARANCE IN OPPOSITION TO PLAINTIFF'S MOTION  
TO AMEND AND SUPPLEMENT COMPLAINT—  
Filed February 9, 1959

Come now the petitioners, Edmund G. Brown, Governor, State of California, and Stanley Mosk, Attorney General, State of California, and appear in the above-entitled action, *specially only*, and for the sole purpose of opposing plaintiff's motion for leave to amend and supplement their complaint (1) by describing the defendant Edmund G. Brown as Governor instead of as Attorney General, State of California, and (2) by naming Stanley Mosk, Attorney General, State of California, as a party defendant, in substitution of [fol. 232] Edmund G. Brown, former Attorney General, State of California. Plaintiff's motion leaves unchanged the allegations in the body of the complaint. Petitioners oppose and object to plaintiffs' said motion on the following grounds:

It is fundamental that a suit in the federal courts to enjoin a public officer from enforcing a statute is personal, and, in the absence of statutory provision for continuing it against his successor in office, the action abates upon his death or retirement from office (*Pullman Co. v. Croom*, 231 U.S. 571, 576; *United States v. Boutwell*, 17 Wall 604). A successor in public office is not privy to his predecessor in respect of the alleged wrongful conduct (*Pennoyer v. McConnaughy*, 140 U.S. 1, 10; *United States ex rel. Bernardin v. Butterworth*, 169 U.S. 600, 603-604; *Philadelphia Company v. Stimson*, 223 U.S. 605, 620-621; *Irwin v. Wright*, 258 U.S. 219, 222). These principles are necessarily applicable to suits against state officers, because suits against such persons in their capacity as state officers constitute

suits against a state in contravention of the Eleventh Amendment (*Ex parte Ayers*, 123 U.S. 443; *Minnesota v. Hitchcock*, 185 U.S. 373; *Fitts v. McGhee*, 172 U.S. 516; *In re State of New York*, 256 U.S. 490).

Plaintiffs' suit to enjoin enforcement of California Agricultural Code sections 784 and 792 was ordered dismissed by this court on December 17, 1958, for the reason that no case or controversy existed under Article 3 of the United States Constitution. Subsequently, on January 5, 1959, the terms of office of former Governor Goodwin J. Knight and of former Attorney General Edmund G. Brown expired. On the same date, petitioner Edmund G. Brown became Governor, and petitioner Stanley Mosk became Attorney General [fol. 233] of the State of California.

Plaintiffs' motion comes within Rule 25(d), Federal Rules of Civil Procedure (28 U.S.C.). This rule, which is not cited by plaintiffs, provides:

*"Substitution of Parties*

• • •

*"(d) Public Officers; Death or Separation from Office.* When an officer of . . . a state . . . is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the United States. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object."

As grounds for the substitution, plaintiffs' application merely states they desire to appeal the order of dismissal, that the substitution will "facilitate service of notice" on the incumbent state Governor and Attorney General, and that

said incumbent state officers "are now continuing to enforce said statute" (Plfs. motion, p. 3).

It is apparent that notices and legal process can be [fol. 234] served upon petitioners without their being joined as party defendants, and plaintiffs' first ground for substitution is clearly untenable. Plaintiffs allege as a second ground that petitioners are continuing to enforce these state laws. This statement sets forth only the legal conclusion of the pleader and does not state facts showing the commission of personal trespasses or wrongs which would justify the application of the extraordinary remedy of injunction (*Fitts v. McGhee*, *supra*, 172 U.S. 516, 528; *Watson v. Buck*, 313 U.S. 387, 400). The plaintiffs' motion makes no allegation of fact from which it can be concluded that either the petitioner Governor Brown or Attorney General Mosk have threatened specific legal action of any kind against the plaintiffs. Plaintiffs' right to perfect its appeal remains intact since W. C. Jacobsen, State Director of Agriculture, remains a party defendant.

As contrasted to the defendant Jacobsen, neither the petitioner Governor Brown, nor petitioner Attorney General Mosk; are specifically charged with the execution of sections 784 and 792, California Agricultural Code. For example, the direct enforcement of these statutes is vested in the Director of Agriculture and the Agricultural Commissioner of each county (Agr. Code, sec. 782), and actions to abate loads of fruits and vegetables as nuisances are filed by District Attorneys of the various counties in the name of the People of the State of California (Agr. Code, sec. 785). These facts make applicable *Fitts v. McGhee*, *supra*, 172 U.S. 516, 529, where the court held:

"There is a wide difference between a suit against individuals, holding official positions under a State, to prevent them, under the sanction of an unconstitutional statute, from committing by some positive act [fol. 235] a wrong or trespass, and a suit against officers of a State merely to test the constitutionality of a state statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the State. In the present case, as we have said, neither of the state officers named held any special

relation to the particular statute alleged to be unconstitutional. They were not expressly directed to see to its enforcement. If, because they were law officers of the State, a case could be made for the purpose of testing the constitutionality of the statute, by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the Governor and the Attorney General, based upon the theory that the former as the executive of the State was, in a general sense, charged with the execution of all its laws, and the latter, as Attorney General, might represent the State in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which cannot be applied to the States of the Union consistently with the fundamental principle that they cannot, without their assent, be brought into any court at the suit of private persons."

In actual fact it would be impossible for either petitioner to have threatened action of any kind against the plaintiffs since January 5, 1959, because there have been no commercial shipments of Florida avocados received in California [fol. 236] during the last eleven months and consequently no opportunity for the application of California law during this time to the plaintiffs' avocados (Affidavit of S. R. Whipple, attached hereto as Exhibit A).

Plaintiffs' motion is ill taken under *Ex Parte La Prade*, 289 U.S. 444, a case in which several railroads filed suit in a federal district court against one Peterson, then Attorney General of the State of Arizona, to restrain enforcement by him of an Arizona train length statute. After hearing, but before judgment, Peterson's term of office expired, and one La Prade became Attorney General. The United States Supreme Court affirmed the refusal by the district court to substitute petitioner La Prade for defendant Peterson as a party, saying:

"As shown above, the purpose of the suits was to prevent a wrong about to be committed by defendant

acting outside, and in abuse of the powers of, his office. The wrongs threatened or committed by him constitute no ground for injunction against petitioner. Plaintiffs did not allege that petitioner threatened or intended to do anything for the enforcement of the statute. The mere declaration of the statute that suits for recovery of penalties shall be brought by the attorney general is not sufficient. Petitioner might hold, as plaintiffs maintain, that the statute is unconstitutional and that, having regard to his official oath, he rightly may refrain from effort to enforce it. United States Constitution, Art. VI, cl. 3. Arizona Revised Code, 1928, sec. 63. . . .

"It follows from what has been said that § 780 (for-  
[fol. 237] mer sec. 28, U.S.C. 780, now Rule 25(d),  
Federal Rules of Civil Procedure) has no application  
to the case as presented and that the district court  
had no jurisdiction to substitute petitioner as a party  
defendant in place of his predecessor or to direct that  
the suits be continued and maintained against him. We  
have no occasion to decide whether or in what circum-  
stances a successor in office who adopts the attitude of  
his predecessor and is proceeding or threatening to pro-  
ceed to enforce the statute may be substituted in a  
pending suit. That question is not here and is reserved"  
(289 U.S. at 458-459).

Also in point is *Ex Parte Poresky*, 290 U.S. 30, where the Supreme Court approved dismissals by the federal district court as to the Governor and Attorney General of Massachusetts, upon the ground they were improperly joined as parties, where plaintiffs' real grievance was against the defendant Massachusetts Registrar of Motor Vehicles, who had refused to issue plaintiff registration and number plates under a Massachusetts compulsory automobile liability insurance statute.

Petitioners submit that plaintiffs can obtain all the relief to which they are entitled, including their right of appeal, against the defendant W. C. Jacobsen, the State Director of Agriculture. Plaintiffs have made no showing either in their complaint, or in this motion, that petitioners Edmund G. Brown and Stanley Mosk have threatened to enforce



these statutes against plaintiffs. Neither have the plaintiffs shown that there is a substantial need for continuing this action against these moving petitioners are (sic) required by Rule 25(d), Federal Rules of Civil Procedure.

[fol. 238] Wherefore, petitioners pray that plaintiffs' motion be denied.

Respectfully submitted,

Stanley Mosk, Attorney General of the State of California, John Fourt, Deputy Attorney General, By John Fourt, Attorneys for Defendants.

[fol. 239]

EXHIBIT "A" TO SPECIAL APPEARANCE

IN UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

Civil Action No. 7648

FLORIDA LIME AND AVOCADO GROWERS, INC., a Florida corporation, and SOUTH FLORIDA GROWERS ASSOCIATION, INC., a Florida corporation, plaintiffs,

vs.

W. C. JACOBSEN, Director of the Department of Agriculture of the State of California, GOODWIN J. KNIGHT, Governor of the State of California, and EDMUND G. BROWN, Attorney General of the State of California, defendants.

AFFIDAVIT OF S. R. WHIPPLE

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF SACRAMENTO        )

Comes now S. R. WHIPPLE and deposes and says:

That he is Assistant Chief, Bureau of Fruit and Vegetable Standardization, California Department of Agriculture.

ture; that he has held said position since August, 1945; that in such position he is charged with the duty of supervising the inspection work performed by inspectors of the Bureau of Fruit and Vegetable Standardization and the [fol. 240] California County Agricultural Commissioners and their staffs in the inspection of avocados found in California wholesale terminal markets in the enforcement of section 792 of the California Agricultural Code, which requires that avocados offered for sale, among other things, also must meet a minimum oil content requirement of eight per cent (8%). That in such capacity he has access to and is familiar with the records pertaining to avocados marketed in California maintained by the Director of Agriculture and more particularly maintained by the California Department of Agriculture Bureaus of Fruit and Vegetable Standardization, Market News, and Agricultural Statistics.

That the official records maintained by the California Department of Agriculture Bureaus of Fruit and Vegetable Standardization, Market News, and Agricultural Statistics, show that no commercial shipments of avocados grown in Florida arrived in California for purposes of sale or otherwise during the period of time March 1, 1958, to February 5, 1959; that affiant has confirmed the reliability of these records by the receipt of reports from the County Agricultural Commissioners of the Counties of Los Angeles, Alameda and San Francisco, the principal receiving areas in California for avocados grown in Florida; that the records in the offices of said County Agricultural Commissioners disclose that no Florida avocados were inspected nor offered for inspection in their respective counties during the period of time March 1, 1958, to February 5, 1959.

S. R. Whipple

Subscribed and sworn to  
before me this 5th day  
of February, 1959.

Laura M. Middleton  
Notary Public in and for the  
County of Sacramento,  
State of California.

[fol. 241] Affidavit of service by mail (omitted in printing).

[fol. 242]

[Title endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

Civil Action No. 7648

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
UNITED STATES—Filed February 12, 1959

I.

Notice is hereby given that Florida Lime and Avocado Growers, Inc., and South Florida Growers Association, Inc., the above named plaintiffs, hereby appeal to the Supreme Court of the United States from the final judgment dismissing plaintiff's complaint for want of jurisdiction, entered in this action on January 13, 1959.

This appeal is taken pursuant to 28 U.S.C.A. section 1253.

II.

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme [fol. 243] Court of the United States, and include in said transcript the following:

1. Complaint filed November 13, 1957.
2. Summons and return filed November 22, 1957.
3. Answer of defendants filed December 6, 1957.
4. Answer of defendants filed December 6, 1957. (Omit affidavit of service.)
5. Request of plaintiffs to set case for trial at early convenience of court, filed February 24, 1958. (Omit notice of motion and certificate of service.)

6. Interrogatories propounded by plaintiffs to defendant W. C. Jacobsen, filed February 24, 1958.

•7. Answers of W. C. Jacobsen to interrogatories, filed March 6, 1958.

8. Answers of Harold E. Kendall to defendants' interrogatories, filed April 8, 1958.

9. Answers of Fred Piowaty to defendants' interrogatories, filed April 8, 1958.

10. Amended answer of defendants to plaintiffs' complaint, filed March 20, 1958.

11. Depositions of R. M. Wimbish, David M. Biggar, Dr. Roy W. Harkness, Harold E. Kendall and Fred Piowaty, together with exhibits, filed March 14, 1958.

12. Notice of motion by defendants, directed to Florida Lime and Avocado Growers, Inc., for an order dismissing the action, or alternatively for stay of proceedings, filed March 14, 1958. (Omit affidavit of service.)

13. Notice of motion by defendants, directed to South Florida Growers Association, Inc., for an order dismissing the action, or alternatively for stay of proceedings, filed March 14, 1958. (Omit all portions after page 2, as identical with all pages of Item 12 following page 2.)

[fol. 244] 14. Plaintiffs' memorandum in opposition to defendants' motion to dismiss action, filed March 31, 1958.

15. Defendants' closing points and authorities in support of motion to dismiss action, filed April 9, 1958. (Omit affidavit of service.)

16. Docket entry April 18, 1958, *re* hearing on that date.

17. Memorandum and order of court filed December 17, 1958.

18. Proposed judgment order lodged by defendants December 24, 1958. (Omit affidavit of service.)

19. Final judgment filed and entered January 13, 1959.

20. Notice by clerk of entry of judgment, mailed January 13, 1959.

21. Notice of entry of judgment mailed by defendants' attorneys to plaintiffs' attorney January 14, 1959. <sup>cc</sup>

22. Notice of appeal to Supreme Court of United States.

### III.

The question presented by the appeal and the circumstances under which it arises

Did the three-judge district court properly dismiss the action, without a trial, for alleged lack of a present controversy cognizable by the court within its constitutional jurisdiction?

To indicate the circumstances of the case infolded in the question presented by the appeal, an outline is submitted of the state of the record at the time of the court's decision.

**Complaint:** The action was instituted under 28 U.S.C.A. 1331 and 1337 by two large-scale handlers of Florida avocados, who since June 11, 1954 have been engaged in interstate commerce in avocados grown in South Florida under a marketing agreement then made by the Secretary of Agriculture of the United States, acting pursuant to the authority vested in him by the Marketing Agreement Act of 1937 (7 U.S.C.A. 601 *et seq.*), and the growers and handlers of [fol. 245] such avocados. The relief sought is declaratory judgment and injunction to restrain further enforcement against appellants of the statute of California (Agricultural Code 792) prohibiting sale in that state of avocados containing less than 8% oil, at the civil and criminal penalties prescribed in other sections of the Agricultural Code (784, 785, 785.6, 786, 831).

In essence, the complaint is that the varieties of avocados grown in Florida, due to the origin of these varieties and the climatic conditions under which they are grown, are of low oil content and seldom attain 8% of oil at maturity, in contrast with the avocados of high oil content produced in California; that a requirement of 8% oil content, when applied to the avocados grown in Florida, is not a valid standard of maturity or quality and serves only to maintain an arbitrary embargo against the marketing of Florida avocados in California; that the avocados shipped by appel-

lants in interstate commerce, notwithstanding low oil content, are mature, wholesome and in compliance with the standards of maturity and quality established by the Secretary of Agriculture pursuant to the authority vested in him by the Marketing Agreement Act of 1937 and the South Florida avocado marketing agreement, but that appellants have nevertheless been and continue to be frustrated in their attempts to avail themselves of the California market for their fruit by the barrier of the 8% oil content requirement;\* that continued enforcement against appellants of section 792 of the Agricultural Code of California is in contravention of the commerce clause of the United States Constitution (article I, section 8, sub-clause 3) and the equal protection provision of section 1 of the Fourteenth Amendment.

[fol. 246] *Answer:* Appellees filed a joint answer to the complaint, replaced by an amended answer, pleading six defenses: (1) general demurrer; (2) lack of jurisdiction; (3) seriatim reply to each of the paragraphs of the complaint, admitting or denying the allegations of the various paragraphs; (4) that appellants should be required to set up the invalidity of the challenged statute in the state court; (5) that the quality and maturity standards promulgated under the marketing agreement governing avocados grown in South Florida, and the methods and procedures used in the administration thereof, are invalid in that they fail to comply with the requirements of the Marketing Agreement Act of 1937; (6) that sections 784 and 792 of the California Agricultural Code constitute a legitimate exercise of the state police power.

*Motion to dismiss:* Following the filing of depositions taken in Miami, Florida, appellees filed identical motions directed to each of the appellants to dismiss the action for failure of the complaint to allege facts showing a cause of action within the equity jurisdiction of the court, lack of jurisdiction under 28 U.S.C.A. 1331 or 1337, and failure of

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\* Particular attention is directed to the allegations of the complaint regarding appellants' attempts to market their avocados in California (paragraphs XXIV(b), XXV, XXVI, XXVII).



the complaint to state/a claim against the appellees upon which relief can be granted. Appellees moved the court, in the alternative, to hold the case in abeyance pending an authoritative interpretation of the challenged California statutes and regulations by the California courts.\* The motion was said to be based on the pleadings, affidavits filed with the motion and the depositions and answers to interrogatories then on file.

*Hearing and ruling:* Appellees motions to dismiss the action were heard and submitted April 18, 1958. On [fol. 247] December 17, 1958, a "Memorandum and Order" of the court was filed, holding that there is no claim here of a present existing controversy between the parties; that an actual controversy could arise only if there was a co-existence of four facts, (1) the bringing of avocados to California by appellants, (2) failure of the avocados to meet the standards fixed by law, (3) refusal of appellants to recondition or remove the avocados, and (4) an election by appellants to contest the abatement in the state courts as provided by section 785 of the Agricultural Code of California.

*Effect of ruling:* The court's formula for "a present existing controversy" ignores the continuous effect of the 8% oil requirement to bar most Florida avocados from California, by far the most favorable market for this fruit in the United States. Also, the effect of the formula is to preclude forever a trial of appellants' complaint in the federal court.

Section 785 of the California Agricultural Code provides for court procedure to review a determination by an enforcing officer that a certain lot of fruit is not in compliance with the applicable standardization provisions of the Code, also to consider the manner of disposing of the noncomplying fruit. In the case of perishable fruit, such as avocados, upon the filing of a petition by the enforcing officer to abate the nuisance, the court may forthwith order that the fruit

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\* No question is raised in the complaint regarding the method for testing oil content of avocados prescribed by the Director of Agriculture of California, or of the accuracy of the test in any instance.

be destroyed or the nuisance otherwise abated. It is not apparent how the issues raised in appellants' complaint under the Constitution of the United States could be presented in a proceeding under section 785 of the California Agricultural Code. Even so, the question on this appeal is intended to include the question whether the appellants may thus be barred from trial of their complaint by the federal court.

Isaac E. Ferguson, Attorney, Florida Lime and Avocado Growers, Inc., and South Florida Growers Association, Inc.

[fol. 248] PROOF OF SERVICE (omitted in printing).

[fol. 253]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
NORTHERN DIVISION  
Civ. No. 7648

FLORIDA LIME AND AVOCADO GROWERS, INC., a Florida corporation, and SOUTH FLORIDA GROWERS ASSOCIATIONS, INC., a Florida corporation, Plaintiffs,

VS.

W. C. JACOBSEN, Director of the Department of Agriculture of the State of California, GOODWIN J. KNIGHT, Governor of the State of California, and EDMUND G. BROWN, Attorney General of the State of California, Defendants.

MEMORANDUM AND ORDER DENYING PLAINTIFF'S MOTION TO  
AMEND THEIR COMPLAINT THROUGH SUBSTITUTION  
OF PARTIES—February 20, 1959

Plaintiffs have heretofore instituted suit against certain officials of the State of California by which an injunction

was sought against the enforcement of allegedly unconstitutional portions of the California Agricultural Code. That suit was ordered dismissed for lack of jurisdiction. Subsequently the term of office of the then Governor and Attorney General, joined as defendants in the complaint, [fol. 254] expired, and Edmund G. Brown and Stanley Mosk, respectively, have succeeded to those positions.

Before noticing their appeal, which has since been perfected, plaintiffs moved to amend and supplement their complaint insofar as its caption was concerned, by substituting these new holders of the office of Governor and Attorney General of the State of California respectively, as parties defendant (Federal Rules of Civil Procedure, Rule 25(d)). Both Brown and Mosk have appeared specially in opposition to this motion.

At argument it appeared that the original officers had been joined out of a commendable abundance of caution, it not being clear whether they were entitled merely to notice, or whether they were made proper parties to the action by statute (Title 28 U.S.C.A. §2284(2)). It further appeared that the motion was being resisted principally on the ground that any action taken by this Court might be construed as inconsistent with the judgment of dismissal, heretofore rendered, and so might breathe new life into the matter.

There is no need to reach the problem of whether this Court has the power to modify the pleadings of an action dismissed for want of jurisdiction as substitution under Rule 25(d) is restricted in its application to substitution of proper parties (*Schwartz v. Metropolitan Life Ins. Co.*, 2 F.R.D. 167). In their motion plaintiffs have failed to show either that the Governor and the Attorney General are proper parties, or that there is a substantial need for the substitution of the names of the new holders of those [fol. 255] State offices (Federal Rules of Civil Procedure, Rule 25(d), and *Danenberg v. Cohen*, 213 F. 2d 944).

As the power to find this Court in error, and allow the substitution sought in the instant motion, subsists at the appellate level, it does not appear that the denial of plaintiffs' motion will in any way prejudice or reduce plaintiffs' rights.

It Is, Therefore, Ordered that plaintiffs' motion to amend their complaint, through substitution of new office holders, be, and the same is, hereby denied.

Dated: February 20, 1959.

Sherrill Halbert, United States District Judge.

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[fol. 1]                      [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
NORTHERN DIVISION  
Civil Action No. 7648

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FLORIDA LIME and AVOCADO GROWERS, INC., a Florida corporation, and SOUTH FLORIDA GROWERS ASSOCIATION, INC., a Florida corporation, Plaintiffs,

v.

W. C. JACOBSEN, Director of the Department of Agriculture of the State of California, GOODWIN J. KNIGHT, Governor of the State of California, and EDMUND G. BROWN, Attorney General of the State of California, Defendants.

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**Depositions—Filed March 14, 1958**

Depositions of David M. Biggar, Dr. Roy W. Harkness, Harold E. Kendall, and Fred Piowaty, witnesses on behalf of the plaintiffs, taken before Henry E. Colman, a Notary Public in and for the State of Florida at Large, in Parlor A, McAllister Hotel, Biscayne and Flagler Streets, Miami, Florida, on January 21 and 22, 1958, pursuant to the stipulation of counsel hereto annexed.

**APPEARANCES:**

Mr. Isaac Edward Ferguson, 233 South Beverly Drive, Beverly Hills, California, on behalf of plaintiffs.

[fol. 2] Mr. John E. Fourt, Deputy Attorney General of the State of California, Library-Courts Building, Sacramento, California, on behalf of defendants.

Mr. William A. Norris, of the firm of Tuttle, Tuttle and Taylor, 711 Equitable Life Building, 411 West Fifth Street, Los Angeles, California, on behalf of Calavo Growers of California.

. . . . .

#### COLLOQUY AMONG COUNSEL

Mr. Ferguson: The depositions to be taken here today and tomorrow are being taken pursuant to stipulation of counsel, a copy of which has been given the Notary Public, and it is requested that the stipulation be annexed to the depositions when completed.

Mr. Norris: My name is William A. Norris, of the Los Angeles law firm of Tuttle, Tuttle and Taylor, general counsel for Calavo Growers of California. Calavo Growers of California proposes to file in the near future a motion to intervene in this action as a party. I am here as counsel for Calavo Growers of California to protect their interests during the course of these depositions.

Mr. Ferguson: On behalf of the plaintiffs, I welcome the presence of Mr. Norris, and have no objection to his participation in the taking of these depositions. Of course there is nothing to say at this time about the proposed request of Calavo Growers of California to be permitted to intervene as a party in this case, but if Mr. Norris [fol. 3] wants me to say something about it at this time, I will be glad to do so.

Mr. Norris: I think in fairness to you, Mr. Ferguson, that my participation here at this time should be without prejudice to any position you may want to take with respect to intervention later on.

Mr. Ferguson: My thought now is that there will be no objection on the part of the plaintiffs to an intervention if the Court deems it proper, however, our position will be that it must not in any way delay the hearing of this case or complicate the issues thereof.

Mr. Fourt: On behalf of the defendants, Jacobsen, Knight and Brown, we agree to the participation in the

taking of these depositions by Calavo Growers of California, and agree to the presence here and to the participation in the depositions of Calavo's attorney, Mr. William A. Norris.

Mr. Ferguson: I request that the Notary Public attach to Mr. Biggar's deposition, when completed, the subpoena pursuant to which Mr. Biggar appears here this morning.

#### DEPOSITION OF DAVID M. BIGGAR

DAVID M. BIGGAR a witness on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ferguson:

Q. Please state your name.

[fol. 4a] A. David M. Biggar.

Q. Will you tell us where you live, Mr. Biggar?

A. I live in Homestead, Florida.

Q. What is your occupation?

A. Manager of Avocado Administrative Committee, an organization established by the Secretary of Agriculture of the United States to administer the provisions of Marketing Order 969, regulating the handling of avocados grown in South Florida.

Q. Is that Marketing Agreement number 121?

A. That is the agreement number, yes.

Q. And the order, in shortened form, is 69?

A. 969, or, in the shortened form, 69.

Q. Where is your office?

A. 1102 North Krome Avenue, Homestead, Florida.

Q. Since when have you been manager of the Avocado Administrative Committee of South Florida?

A. Since July, 1954; since the inception of the Marketing Agreement and Order.

Q. What are your duties as manager of Avocado Administrative Committee?

A. My duties are administrative, arranging for meetings and conducting the usual office functions of an office manager, as well as carrying out other administrative duties.

Q. Do you keep all of the Committee's records?



A. Yes, I keep the records of the Committee.

[fol. 5] Q. Does that include the preparation of statistical data deemed of interest to the growers and handlers of avocados who operate under the Federal Marketing Agreement?

A. In the course of my duties and functions, I prepare statistical releases for the industry and am required at the end of each year to issue a report to the Secretary and to all interested growers concerning the activities of the Committee for the current season.

Q. So that you have issued by this time many annual reports?

A. We have issued three annual reports as of this time; one for each season, 1954-55, 1955-56 and 1956-57. Our current fiscal year ends March 31st, and we will issue the fourth report subsequent to that date.

Q. Does that define the season; in other words, do you mean by "season", your fiscal year?

A. It so happens that our fiscal year coincides with our season.

Q. It extends from April 1 of one year to March of the following year?

A. Our fiscal year extends from April 1 through March 31st. Our actual shipping season starts somewhat later and terminates as a rule somewhat later.

Q. Before you became associated with the Avocado Administrative Committee in 1954, had you been a student to some extent in the field of agriculture?

A. Quite.

[fol. 6] Q. Go ahead and tell us about that.

A. I received my Master of Agriculture Degree at the University of Florida in June, 1954. I specialized in the field of agricultural marketing for the purpose of that degree, and took my Bachelor's Degree in Business Administration, with a major in the field of marketing also.

Q. Is it one of your duties as Committee manager to issue licenses to handlers of avocados who meet the requirements of the Marketing Agreement?

A. It is.

Q. I show you two documents, entitled "Registered Avocado Handler", to be marked plaintiffs' exhibits 1 and

2 for identification, and ask you if these are the documents which you prepared and issued?

Mr. Fourt: May I see them?

Mr. Ferguson: Yes. Let me have them marked first.

The Witness: They are.

By Mr. Ferguson:

Q. What are they?

A. They are certificates of registration showing that the handlers, Florida Lime and Avocado Growers, Inc. and South Florida Growers Association, Inc., have registered with the Avocado Administrative Committee pursuant to the requirements of the Marketing Agreement and Order having to do with the handling of avocados grown in South Florida.

Q. For what period are these registrations effective?

[fol. 7] A. These registrations are effective for the 1957-58 season, or from April 1, 1957 through March 31, 1958.

Q. Were identical licenses issued to the same handlers in prior years?

A. Identical registrations. Of course the form itself varied with the season, but most of these organizations were licensed or registered—I prefer to use the word registered—for each of the seasons covered by the Federal Marketing Agreement and Order.

Q. That would be since June, 1954?

A. Correct.

Mr. Ferguson: Plaintiffs' exhibits 1 and 2 are offered in evidence, and I would like to have an understanding as to these documents or any other original documents that may be offered in evidence, that photostats may be substituted for the originals.

Mr. Fourt: The defendants, Knight, Jacobsen and Brown, have no objection to the substitution of photostats. However, Mr. Ferguson, we believe it is premature to offer them in evidence at this time. Wouldn't it be better to just have them marked for identification?

Mr. Ferguson: They are now marked for identification. The offer is made to indicate that the interrogation will be followed by an offer of the documents in evidence.

Mr. Fourt: However, we are not stipulating that they may be admitted in evidence.

[fol. 8] Mr. Ferguson: No. I am not asking you to stipulate to their admission. We will leave that for a ruling of the Court. With that clarification, Mr. Fourt, I am asking only that there be an agreement that the photostats may be offered in lieu of the originals.

Mr. Fourt: It is so stipulated.

Mr. Norris: It is so stipulated by Calavo Growers of California, so long as it is understood that there is no agreement that they are to be admitted in evidence.

Mr. Fourt: Perhaps we can reduce the confusion here if Jacobsen, Brown and Knight are referred to as defendants, and Calavo be referred to as intervener.

Mr. Norris: I will just refer to my client as Calavo Growers of California, as distinguished from any parties.

By Mr. Ferguson:

Q. Mr. Biggar, since 1954 has all of your time been devoted to the problems of the Avocado Industry in Florida in relation to the functioning of the Avocado Administrative Committee?

A. No. I am jointly employed by two Committees, the Avocado Administrative Committee, who were my sole employers for 1954-1955 season. Since 1955-56, I have been employed jointly by the Lime Administrative Committee, a parallel organization to the Avocado Administrative Committee.

Q. What area is embraced in the Federal Marketing Agreement, number 121, or Marketing Order number 69 [fol. 9] of the United States Secretary of Agriculture?

A. Marketing Order 969, and the accompanying Marketing Agreement, as amended, now encompasses the counties of Pinellas, Hillsborough, Polk, Lake, Orange and Brevard, and all counties situated south of a line created by the boundaries of these counties and located south of these counties in the State of Florida.

Q. Does this include the entire area of Florida in which avocados are customarily grown?

A. Yes.

Q. Is there considerable backyard or non-commercial and commercial growing of avocados in Florida?

A. There is considerable commercial and non-commercial growing of avocados in South Florida, yes.

Q. Approximately what is the acreage of commercial production of avocados in Florida?

A. I have been told that the acreage is approximately eleven thousand acres. I have never had cause to question the figure or to check the figure, personally.

Q. Is this in the main a central production area?

A. The bulk of the production, and we estimate this to be approximately ninety percent; in other words, we estimate that the production in Dade County, Florida is ninety percent of the total production.

Mr. Norris: It is understood, is it not, that all objections as to the admissibility of any of this testimony are reserved for trial, and if we can object on the ground of hearsay at that time we will not necessarily make objections at this time.

By Mr. Ferguson:

Q. Mr. Biggar, you have already mentioned the annual reports of the Avocado Administrative Committee which you have prepared. Is there included in the first annual report for the 1954-55 season a summary of the regulations made by the Secretary of Agriculture, fixing the permissible shipping dates for the various varieties of avocados handled in South Florida?

A. With your permission, Mr. Ferguson, I will refresh my memory on that.

Q. Just go ahead and look at it. Do you have copies?

A. Yes, I have copies of each of these. There is comment on the regulations, but not in a summary form, however, in this particular publication for 1954-1955 season.

Q. Not a schedule of dates?

A. No, sir.

Q. Does the Avocado Administrative Committee receive a copy of each order made by the Secretary of Agriculture under the Marketing Agreement?

A. It does.

Q. Do you have with you at this hearing a complete file of these orders?

A. I do.

[fol. 11] Q. Turning now to the 1955-56 annual report, does this include a reproduction of the schedule of permissible shipping dates for avocados in the 1955-56 season?

A. This schedule makes reference to Avocado Orders numbers 6, 8, 10 and 11, but does not reproduce those orders.

Q. It contains no summarized schedule of shipping dates?

A. It does not.

Q. I direct your attention to pages 16 and 17 of this report entitled "SUMMARY OF AVOCADO SHIPMENTS BY VARIETIES AND BY WEEKS—1955-56 SEASON".

Did you prepare this summary?

A. I did.

Q. From what source of information?

A. This information was compiled from copies of the Federal-State Inspection Certificates issued by the United States Department of Agriculture in cooperation with the Florida State Department of Agriculture.

Q. Does the Avocado Administrative Committee receive copies of all inspection certificates?

A. We do.

Q. Issued by the Inspection Service?

A. Yes. May I qualify that?

Q. Yes.

A. I mean pertaining to avocados.

Q. I meant, of course, Mr. Biggars, pertaining to avocados.

A. That is right.

[fol. 12] Mr. Ferguson: Will the reporter mark this document as plaintiffs' exhibit 3 for identification?

By Mr. Ferguson:

Q. Mr. Biggar, I now show you a document marked plaintiffs' exhibit 3 for identification. Is this the type of inspection certificate to which you referred in your last answer?

A. It is.

Q. Does the Committee receive duplicate copies of all such certificates issued by the Federal-State Inspection Service of Florida?

A. Yes, affecting avocados.

Q. This particular certificate is not your file copy, is it?

A. The copy that we received is at present and it has been in the past a green copy of a multiple system.

Q. What color is this one?

A. This one is yellow.

Q. Issued to whom?

A. I am not clear on this. It is one of the copies that we do not receive.

Q. Incidentally, Mr. Biggar, in this certificate, under REMARKS, appear some abbreviations. Will you be good enough to explain those to us?

A. Under REMARKS on this particular certificate, bearing certificate number B-66158, is the following: "Meets [fol. 13] Florida AAC No. 2 Grade MSO". The term "AAC No. 2 Grade", refers to the Avocado Administrative Committee number 2 grade, as approved by the Secretary of Agriculture. With your permission I will look in my notes here and give you the docket number on that. The "AAC No. 2 Grade" refers to Avocado Administrative Committee Rules and Regulations, Grade Standards, as amended, as reprinted from the Federal Register of April 13, 1956.

Q. I was going to ask you about that at a later point. That explains that.

A. This "AAC No. 2 Grade" contained within that is a grade designation of this document that I referred to.

Q. You mean the number 2 grade stated in the certificate?

A. The number 2 grade under REMARKS—I will read it, "Meets Florida AAC No. 2 Grade"—that is a grade designation within the document referred to before. The "MSO" is a short abbreviation for the terminology "Meets Secretary's Order". That is a terminology used on all certificates to indicate that the fruit described in the certificate has met the provisions of the Federal Marketing Order by the Secretary of Agriculture.

Q. Now, Mr. Biggar, coming back to pages 16 and 17 of the 1955-56 annual report, is this summary of avocado



shipments by varieties and weeks, comprising pages 16 and 17 of the Committee's annual report, true and correct?

A. Substantially so, yes.

Q. Now, instead of using the book, Mr. Biggar, I will ask [fol. 14] you if you have other mimeograph—

Mr. Fourn: We have no objection to the book being used.

Mr. Ferguson: I don't want to further encumber the record. If there is anything in the report you want, in addition to these two pages, a prior agreement to admission, all right; however, at the moment I will ask that these two pages be marked plaintiffs' exhibit 4 for identification.

Mr. Fourn: That is agreeable.

Mr. Ferguson: Plaintiffs' exhibit 4 will be offered in evidence. It is marked for identification only now, and that is all I can do at this time, until the Court rules.

Mr. Fourn: Since I want to be very careful about this record, I desire that it be understood that we are not stipulating to it being admitted in evidence.

Mr. Ferguson: No, but it might guide your cross examination of the witness.

By Mr. Ferguson:

Q. Turning now to page 19 of this 1955-56 annual report, entitled "COMPOSITE SUPPLY OF AVOCADOS, 1955-56 Season, By Points of Origin",—did you prepare this tabulation?

A. Yes.

Q. From what source?

A. As footnoted on this page, in the case of California, this was from "Estimated from monthly production data" supplied by Calavo Growers of California at my request. Under suggestions made by Calavo Growers of California [fol. 15] concerning distribution, and in some instances—I don't recall the exact period, from estimates made by Calavo Growers of California on periods not yet completed when they supplied the material.

On the Florida information, that was taken or compiled from certificates of inspection received from the Federal Inspection Service.

The Cuban information, as footnoted, was from unpublished records of United States Department of Agriculture Inspection Service, which we received in letter form from the Agriculture Marketing Service in Washington, and they in turn compiled the information from inspection certificates issued covering shipments from Cuba to the United States mainland.

Q. As to Florida, does the Committee receive reports from the handlers of avocados under the Marketing Agreement, as to the quantity handled, from time to time?

A. Mr. Ferguson, I call your attention again to the fact that this is a 1955-56 annual report. At that time we didn't receive such reports. The information contained on the certificate at that time indicated varieties, and the entire information was taken from the certificates at that time. Now subsequent to that "Variety" has been omitted from the certificate, and we receive a certificate now showing total quantities, and a report from handlers showing varieties and total quantities.

Q. How regularly are these reports received?

A. These reports are received weekly, but this particular [fol. 16] annual report which we are discussing at this moment, Mr. Ferguson, does not include any weekly reports from handlers. It is compiled in its entirety from certificates of inspection.

Q. Now, Mr. Biggar, with that explanation of the material used, is this tabulation a true and correct summary of the data?

A. For Florida?

Q. No; in its entirety.

A. It is and, as I explained earlier, the source.

Q. And you refer now to the tabulation in its entirety?

A. Yes.

Mr. Ferguson: I will now ask to have this mimeograph copy of page 19 marked for identification as plaintiffs' exhibit 5.

Mr. Fourn: For identification.

Mr. Ferguson: Yes. Plaintiffs' exhibit 5 will be offered in evidence, and I call counsel's attention to the fact that the results of this tabulation are alleged in the Complaint

and admitted in the Answer, namely, in paragraph 15 of the Complaint, and page 2, lines 20 to 26 of the Answer.

Mr. Fourt: The defendants are not stipulating that this is to be admitted in evidence, Mr. Ferguson.

Mr. Ferguson: That is right. This holds all the way through, Mr. Fourt, so I won't burden you to repeat it each time.

Mr. Fourt: Thank you.

By Mr. Ferguson:

Q. Mr. Biggar, I now call your attention to the Com-[fol. 17] mittee report for the 1956-57 season, particularly to pages 7 and 8 thereof, entitled "MATURITY REGULATIONS". Did you prepare this summary?

A. I did.

Q. Is this a true and correct summary of the orders made by the Secretary of Agriculture with respect to the Maturity Regulations having to do with the shipping of avocados under the Marketing Agreement in the 1956-57 season?

A. It is.

Mr. Ferguson: Will the reporter please mark another copy of these two pages, 7 and 8, as plaintiffs' exhibit 6 for identification?

(Said pages 7 and 8 marked plaintiffs' exhibit 6 for identification.)

Mr. Ferguson: Plaintiffs' exhibit 6 for identification will be offered in evidence.

By Mr. Ferguson:

Q. Mr. Biggar, pages 18 and 19 of this report appear to be a summary of avocados handled by varieties and by weeks in the 1956-57 season. Did you prepare this summary?

A. I did.

Q. From the records of the Avocado Administrative Committee?

A. On page 19 it is footnoted that "Lines 1-13 show net quantities shipped, based on 3 flats equal 1 multilayer, 4 flats equal one bushel.

"Lines 14-40 show approximate gross quantities handled [fol. 18] (including gradeout) as reported weekly by handlers."

Lines 1 to 13 were taken directly from the certificate which at that time showed varieties.

Q. These are the inspection certificates?

A. That is correct, the Federal-State Inspection Certificates, as previously entered as an exhibit here.

As stated, lines 14 through 40 were taken from the handlers' weekly reports as footnoted, showing approximate gross quantities handled by varieties.

At the period ending September 15, 1956, the policy of the Federal-State Inspection Service was to change so as to no longer require that the variety be shown on the actual inspection certificate. The variety is taken into cognizance by the inspector and noted on his worksheet, and the term "MSO" or "Meets Secretary's Order" is placed at the bottom of the certificate to indicate that this variety has been taken into cognizance, but it is no longer shown on the face of the certificate of inspection.

Q. With the explanation you have just made, Mr. Biggar, is this summary a true and correct compilation from the figures shown in the Committee's records?

A. Yes.

Mr. Ferguson: Will the reporter mark this document, consisting of two pages, as plaintiffs' exhibit 7 for identification?

By Mr. Ferguson:

Q. At page 21 of this 1956-57 report, there is a tabulation [fol. 19] entitled "Composite Supply of Avocados by Season and Points of Origin". Is that of the same nature as a like summary in the prior annual report?

A. It is. I might call your attention to the footnotes—

Q. I was going to ask you the source of the information. The footnote there reads "1955-56 Florida quantities revised to reflect standard base of 4 flats equal one bushel; one multilayer equals 3 flats."

A. By way of explanation, in the earlier report submitted here in evidence, Mr. Ferguson, the bushels were

computed on the basis of weight, a weight of fifteen pounds per flat and forty pounds per multilayer; that was the standard unit of measure there computed. This unit of measure was changed during the 1956-57 season, and the bushel, for the purpose of our record keeping, was computed on a volume basis, with each flat assigned a value of one-quarter bushel, and each multilayer a total value of three-fourths of a bushel, for accounting purposes. Now, to bring the figures into proper perspective, the 1955-56 figures as pertain to Florida were revised and recomputed, and there will be discrepancy between the figures shown in the 1955-56 portion of page 21 of the 1956-57 annual report, with those shown for the 1955-56 report.

Q. Due to mathematical adjustments?

A. Yes, due to mathematical adjustments.

Q. Referring to the 1956-57 summary contained on this [fol. 20] page, is that true and correct?

A. It is true and correct, taking into consideration the source of information in each instance.

Q. And as to that, Mr. Biggar, do you wish to add to your footnotes appearing on the page itself?

A. No; I believe that will stand.

Mr. Ferguson: Will the reporter please mark this document as plaintiffs' exhibit 8 for identification?

(Document so marked by reporter.)

Mr. Ferguson: The document now marked plaintiffs' exhibit 8 for identification will be offered in evidence as plaintiffs' exhibit 8.

By Mr. Ferguson:

Q. Mr. Biggar, I now show you a document entitled "Avocado Shipping Dates, 1957-58 Season," which I will ask the reporter to mark as plaintiffs' exhibit 9 for identification. Did you prepare this document?

A. I did.

Q. Is this a true summary of orders made by the Secretary of Agriculture respecting the shipping dates for Florida avocados in the 1957-58 season?

A. It is.

Mr. Ferguson: I advise counsel that I shall offer this page as plaintiffs' exhibit 9, which, for convenience, is the same as exhibit "B" attached to the Complaint, and which is admitted in the Answer.

[fol. 21] By Mr. Ferguson:

Q. Mr. Biggar, has the Secretary of Agriculture issued any additional orders as to shipping dates for the avocados covered by the Federal Marketing Agreement since October 8, 1957?

A. Once again, Mr. Ferguson, I prefer to refresh my memory. I have a copy of the order. Order 14 was actually issued on October 10th, to become effective 12:01 A.M., Eastern Standard Time, October 14, 1957. These avocado shipping dates issued October 8th anticipated the Secretary's order, and encompasses the order issued effective October 14th.

Q. Has there been anything later?

A. No further shipping dates changed since that time.

Q. It is alleged in the plaintiffs' Complaint in this case, paragraph 11, and admitted in the Answer of the defendants, that grade standards of avocados handled under the Marketing Agreement 121, were by order of the Secretary of Agriculture effective May 21, 1955, as amended June 13, 1956. You have already made a statement to that effect, and the grade standards of June 13, 1956 are attached to the Complaint as exhibit "C". My question is has there been any amendment or amendments of the grade order since June 13, 1956?

A. In order to clarify the situation as regards grade standards as compared to grade order, there has been no change as to standards, but there has been a change in the order. The Secretary of Agriculture issued amendment 7, [fol. 22] Avocado Order 14, on November 14, 1957, to become effective 12:01 A.M., Eastern Standard Time, November 18, 1957, which changed the grade requirements from a minimum of an AAC number 2 grade as set forth in the April 13th standards.

Q. Is that April 13, 1956?

A. Yes, April 13, 1956.



Q. I think I must have said "June". It is April, is it?

A. Yes.

Q. Go ahead.

A. —to a number 2 grade, containing not less than twenty-five percent number 1 quality.

Q. Was that order preceded by a recommendation of the Avocado Administrative Committee?

A. It was.

Q. What is the date of that recommendation?

A. Since again, Mr. Ferguson, this is a matter of date, I will have to refer to the minutes. That recommendation was made at the meeting of November 12, 1957.

Q. Let's see if the record is clear about these grade standards. You stated that they were established by an order of April 13, 1956, the order effective on that date?

A. Correct.

Q. And that these grade standards still stand?

A. Yes, they still stand.

Q. What has been the change?

[fol. 23] A. The change was to increase the quality or to increase the quality requirement from a straight AAC number 2 grade as a minimum to an AAC number 2 grade containing not less than twenty-five percent number 1 quality.

Q. Does that mean that since April, 1956 the minimum quality requirement for the shipping of Florida avocados is grade 2?

A. With certain periods in which we had no regulations. There are two distinct documents; one is a regulation and one is the standard. The standard has not been changed since 1956. The regulations have been changed from time to time.

Q. We have the grade standards of April 13, 1956. Since then, as I get it, there have been regulations prohibiting the shipment of avocados of certain grades?

A. Yes.

Q. Now, Mr. Biggar, will you tell us again what are these regulations and when they became effective?

A. Again I will have to refer to the orders themselves.

Q. If you will.

A. Referring to Avocado Order 14, issued May 21, 1957, to become effective 12:01 A.M., Eastern Standard Time,

May 26, 1957, which reads in part:

"During the period beginning at 12:01 A.M., Eastern Standard Time, June 3, 1957, and ending at 12:01 A.M., Eastern Standard Time, April 30, 1958, no [fol. 24] handler shall handle any avocados grown in South Florida unless such avocados grade at least number 2 grade and meet the requirements of standard pack."

The first amendment that affected this particular factor, that is, the factor of grade, was amendment 7, which I have previously referred to, dated November 14, 1957, to become effective 12:01 Eastern Standard Time, November 18, 1957, which reads in part:

"During the period beginning at 12:01 A.M., Eastern Standard Time, November 18, 1957, and ending 12:01 A.M., Eastern Standard Time, April 30, 1958, no handler shall handle any container of avocados grown in South Florida unless the avocados in such container grade not less than twenty-five percent number 1 grade, and the remainder at least number 2 grade."

Then it goes on to say:

"Provided that not to exceed five percent of the containers in a lot may contain avocados which fail to meet such requirements if the entire lot is within the tolerance and meet the requirements of the standard pack."

Then it goes on to say:

"The grade terminology shall have the same meaning as set forth in sub-section 969.130 of the supplementing [fol. 25] rules and regulations," and then this is a description of the April 13th standards.

Q. Does this last amendment of the grade standard regulations have a time limitation?

A. It is effective until April 30, 1958.

Q. And that is the grade standard now in effect?

A. Yes. Of course all regulations are on a year-to-year basis, in order to permit the incoming Committee to make its recommendations to the Secretary of Agriculture.

Q. So that the present regulation is a minimum requirement of grade 2 of which, however, at least twenty-five percent must be grade 1?

A. Yes, that is correct.

Q. Mr. Biggar, during the current year have you prepared and issued to the growers and handlers a series of weekly summaries of avocado shipments from the South Florida production area?

A. I have.

Q. Do you have them with you?

A. Yes, sir.

Q. Have there been twenty-nine such weekly reports?

A. I numbered them consecutively by weeks and my last report is number 29.

Q. Which means one report per week since then?

A. The first report, report number 1, is dated July 1, 1957, and it covers the period April 1 through June 15, [fol. 26] June 16 through June 22nd and June 23rd through June 29th, for the 1957-58 season, with comparative information for the period April 1 through June 30 for the 1956-57 season.

Mr. Ferguson: Will you, Mr. Reporter, mark these five pages as plaintiffs' exhibit 10 for identification?

By Mr. Ferguson:

Q. Mr. Biggar, these five pages marked now plaintiffs' exhibit 10 for identification are five of the twenty-nine reports, are they not?

A. They are.

Q. Were they selected as dates nearest the end of each month indicated?

A. They were for dates of issue.

Q. You mean the dates when you issued these statements; is that right?

A. That is right.

Q. Did you prepare these summaries of avocado ship-

ments yourself from records of the Avocado Administrative Committee?

A. Yes. These were taken entirely from the certificates of inspection issued by the Federal-State Inspection Service.

Q. On the copies here you list "Units for Florida Destinations", and you have a footnote there. Will you explain that footnote?

A. Close examination of the exhibit previously introduced of a Federal-State Inspection Certificate affecting avocados, will show the destination is not included. There [fol. 27] are certain avocados transported by common carrier which appear on the surface to be going out of the state but which in fact may in small quantities be delivered within the state. For instance, a "lot" may consist of sixteen hundred flats bound for a terminal market, and a small portion of this may be dropped in a Florida market en route to other destinations. The footnote there does not include "drop lots". There are other lots which we can determine are destined for Florida markets which could have been on their way out of the state from such terminals as Tampa, Sanford or Jacksonville to out-of-state destinations. The two quantities probably offset one another to a large extent.

Q. In your opinion is this tabulation substantially correct?

A. In my opinion this tabulation is substantially correct.

Mr. Ferguson: These five pages marked plaintiffs' exhibit 10 for identification will be offered in evidence.

By Mr. Ferguson:

Q. Is this the first season during which you have prepared such weekly summaries?

A. Yes, this is the first season that the attempt has been made.

Q. Has the 1957-58 shipping season ended?

A. No.

Q. Can you estimate how much longer it will continue?

A. This is the 21st day of January and I would estimate

that the season will be virtually over—there is no way of determining exactly—by February 15th. The bulk of the [fol. 28] volume will have moved by then, although we will still have some shipments after that date.

Q. Look at your last weekly statement dated January 13, 1958, which contains totals to January 11, 1958. Can you make a reasonably accurate estimate of the probable total for the entire 1957-58 season?

A. Within a range, yes. I wouldn't want to pin it down to the final bushel, but there will be between four hundred fifty thousand and five hundred thousand bushels in total.

Mr. Ferguson: Mark this page as plaintiffs' exhibit 11 for identification.

By Mr. Ferguson:

Q. Mr. Biggar, did you prepare the statement contained on the page marked plaintiffs' exhibit 11 for identification?

A. I did.

Q. What is the difference, if any, between the figures as stated in this exhibit 11 and the total figures stated in the January 13, 1958 page of exhibit 10?

A. The quantities have been converted to bushels.

Q. Otherwise they are the same?

A. Yes, rather than the units as stated in the form you previously mentioned.

Q. Units meaning what?

A. A unit means one-fourth of a bushel equivalent, whereas the term "bushel" has been used to indicate four flats or four lugs.

[fol. 29] Q. Was this done merely to make this conform with the upper part of the pages comprising plaintiffs' exhibit 10 in which the quantities are stated in bushels?

A. That is correct.

Mr. Ferguson: The plaintiffs will offer plaintiffs' exhibit 11 in evidence.

By Mr. Ferguson:

Q. Mr. Biggar, I take it that you are acquainted with Dr. Roy W. Harkness of the Sub-Tropical Experiment Station in Homestead of the University of Florida?

A. I am.

Q. Do you know whether tests of the oil content of avocados are made at this Experiment Station upon application by growers and handlers of avocados in the South Florida Production Area?

A. It has been their practice and it is their practice to make such tests.

Q. Have you examined his records as to these tests?

A. I have.

Q. Were you permitted by Dr. Harkness to copy a record of such tests made upon application of Florida Lime and Avocado Growers, Inc., and also of the tests made upon application of Mr. Kendall of South Florida Growers Association, Inc.?

A. I was informed by Dr. Reuhle, the Director of the Experiment Station, and the Director in charge of the Sub-Tropical Experiment Station, that these records are public [fol. 30] records and are available to all concerned, and I was permitted by Dr. Harkness to make extracts from these records for a four-year period for each of the two plaintiffs.

Mr. Ferguson: May these four pages entitled "Oil Content Tests of Florida Avocados made at Experiment Station, Homestead, Florida, at Request of Florida Lime & Avocado Growers, Inc." be marked plaintiffs' exhibit 12 for identification, and the four pages entitled "Oil Content Tests of Florida Avocados made at Experiment Station, Homestead, Florida, at Request of South Florida Growers Association, Inc." be marked plaintiffs' exhibit 13 for identification?

By Mr. Ferguson:

Q. Did you personally make a copy of the Oil Tests as recorded at the Experiment Station?

A. I did.

Q. Are the entries in these two exhibits, plaintiffs' exhibit 13 and plaintiffs' exhibit 12 for identification, a correct recordation of what appears in the records at the Experiment Station?

A. They are.



Mr. Ferguson: I wish to state for the record that these lists of Oil Tests will not be offered in evidence until Dr. Harkness testifies as a witness in this case, but any prior reference to the contents of these exhibits will be subject to the testimony of Dr. Harkness.

By Mr. Ferguson:

Q. Mr. Biggar, looking further at these compilations, [fol. 31] plaintiffs' exhibits 12 and 13 for identification, there is an addendum at the bottom of each page, is there not, entitled "Shipping Dates Authorized by Regulations of U. S. Secretary of Agriculture Under South Florida Federal Marketing Agreement"?

From what source did you obtain the data in these footnotes or addenda?

A. The information shown at the bottom of each page under the heading "Shipping Dates Authorized by Regulations of U. S. Secretary of Agriculture", were extracted from the orders issued by the Secretary of Agriculture for each of the indicated seasons as indicated at the top of the sheet, and is covered by the Oil Tests for these particular seasons.

Q. These shipping dates are all included in exhibits heretofore identified, are they not?

A. No, not in all instances. That is true for the 1956-57 season.

Q. And 1957-58?

A. And 1957-58 through the exhibit 9.

Q. Where they go further back, did you take them from the Secretary's Orders?

A. Yes, I took them from the Secretary's Orders.

Q. And it is limited, is it not, to the varieties of which tests were made?

A. Limited to the pertinent varieties shown in the tests, [fol. 32] yes.

Mr. Ferguson: You may cross examine.

Mr. Fount: I wonder if we might be able to have a recess at this time in order that I might be able to have access to the public file to which Mr. Biggar made reference?

Mr. Ferguson: Yes.

(Adjournment taken to 1:00 P.M. of the same day.)

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AFTERNOON SESSION

1:00 P.M., January 21, 1958

Deposition-resumed pursuant to adjournment.

Appearances: Same as heretofore noted.

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DAVID M. BIGGAR resumed the stand and was examined and testified further as follows:

Cross examination.

By Mr. Fourt:

Q. Mr. Biggar, you mentioned and listed several counties through the State of Florida which constitute the northern limits of your marketing area; is that correct?

A. Yes.

Q. Is there a limited production of avocados in the State of Florida north of those counties?

A. I don't know.

Q. I show you plaintiffs' exhibit 3 for identification and ask you if you know the meaning of the item "Lot 59 Hse. 20"?

[fol. 33] A. Yes, I do.

Q. What are those designations?

A. This particular certificate number B-66158 represents 1874 quarter bushel F.B. boxes, which contains the markings as designated here, "Lot 58, House 20". The lot number 59 is a number issued to designate the week in which the fruit was picked. The house number is a number assigned by the Inspection Service to each house to identify the house. That is the means of reconciling these particular 1874 containers with this particular certificate, as a matter of identification, if you will.

Q. Were you personally present when this inspection certificate was made?

A. No.

Q. Do you know of your own knowledge whether the figure "1874 packages" constituted the entire lot of avocados shipped on that trailer described in plaintiffs' exhibit 3 for identification?

A. No, I do not. I was asked merely to identify that document as a form used by the Federal-State Inspection Service for the certification of avocados. I know nothing of that particular lot as such. Perhaps I could develop some information on that.

Mr. Ferguson: I can tell counsel now that there will be some testimony about that from the shippers.

By Mr. Fourn:

Q. Do you have any personal knowledge regarding the stamped impression which appears in the right center [fol. 34] of plaintiffs' exhibit 3 for identification which reads "Passed"?

A. I have observed a stamp similar to that placed upon this type of certificate, the yellow copy, at the State Road Guard Stations located throughout the northern portion of the state, to indicate that that shipment had cleared through that station, and that such was not available for reissue to pass a second lot.

Q. But you have no personal knowledge as to this particular stamp?

A. I have not been requested to search our records for information concerning this particular lot.

Q. Then it is correct that as to the stamp identification "Passed", you have no personal knowledge of that.

A. No, sir.

Q. Do you have any personal knowledge regarding the stamped impression "Inspected and Released" in the middle of plaintiffs' exhibit 3 for identification?

A. I have no knowledge whatsoever of that stamp.

Q. What is the governmental agency that makes inspections of avocados which are regulated by the Avocado Marketing Order?

A. The agency's name appears at the top of the inspection certificate. The exact wording of the title, I don't know.

If I may be permitted to refresh my memory with that exhibit, I can read it into the record.

Q. Please do so.

[fol. 35] A. "U. S. Department of Agriculture—Agricultural Marketing Service—Florida Department of Agriculture—Citrus and Vegetable Inspection Division".

That title describes the two organizations which cooperate in conducting these inspections.

Q. Mr. Biggar, a moment ago you were just reading from the top of plaintiffs' exhibit 3 for identification; is that right?

A. That is right.

Q. Do you have any personal knowledge as to who pays the salary of the inspector here at this agency, as to whether it is the Federal or State Government?

A. Anything I would say on that would be hearsay, because I have had no reason to check that closely.

Q. Does the Inspection Service which you described a moment ago come under the jurisdiction of the Avocado Administrative Committee?

A. No.

Q. Do you have any personal control over the inspection of avocados as regulated by the Agricultural Marketing Order?

A. No, sir.

Q. Plaintiffs' exhibit 5 for identification denotes that there is some Cuban production. Is that Cuban production composed of several varieties of avocados?

A. There are several varieties and a miscellaneous category referred to as seedlings.

[fol. 36] Q. In which category does the majority of the Cuban production fall?

A. In the category of seedlings.

Q. Do you have any personal knowledge as to why the designation of variety was removed from the grade certificate by the Inspection Service?

A. They considered it to be superfluous.

Q. I show you plaintiffs' exhibit 4 for identification and ask you if you have any personal knowledge regarding the origin of those statistics?

A. This is a summary of avocado shipments by varieties

and weeks for the 1955-56 season. The origin of this information for this particular season as described in this exhibit was the inspection certificates as issued by the joint Federal-State Inspection Service. At that time the certificates bore the variety designation.

Q. However, you have no personal knowledge regarding the observation of that fruit covered in plaintiffs' exhibit 4 for identification?

A. That question is not clear.

Q. In plaintiffs' exhibit 4 for identification, for the week ending July 9th, it indicates that in the week ending July 9th there were 1991 box equivalents of fruit shipped. Did you personally observe that fruit and count it?

A. The answer obviously is no.

[fol. 37] Q. And isn't that true with all of the statistics listed on plaintiffs' exhibit 4 for identification?

A. I relied entirely upon the documents presented to me by the Federal-State Inspection Service.

Q. And you have no personal knowledge as to the origin of these certificates other than as you have stated?

A. That is right.

Q. I now show you plaintiffs' exhibit 7 for identification and ask you if you personally observed the fruit and counted the boxes or bushels which are included in that year's tabulation?

A. As indicated in a footnote on that tabulation, I relied upon lines 1 through 13 of the documents submitted to me by the Federal-State Inspection Service, and upon lines 13 to 40 of the reports supplied to me by the shippers of the fruit. I did not personally count the fruit.

Q. I show you plaintiffs' exhibit 8 for identification and ask if you personally observed the fruit and counted the containers which are covered in that tabulation?

A. There are tabulations on this exhibit 8 for the State of California, the State of Florida and for the Nation of Cuba. I did not count, as previously testified, the fruit with respect to Florida, and had, of course, no access to the fruit having to do with California or Cuba. The answer is that I have not personally counted the fruit.

Q. Would that answer be the same as to the figures

[fol. 38] given for bushels shipped during certain dates as given on plaintiffs' exhibit 11 for identification?

A. It would.

Q. I now show you plaintiffs' exhibit 12 for identification and ask you at whose request did you go to the Sub-Tropical Experiment Station of the University of Florida to obtain this information?

A. I was requested to provide this information or this type of information by Mr. Fred Piowaty and Mr. Harold Kendall, and by Mr. Ferguson.

Q. Were you authorized to do so by a resolution of the Avocado Administrative Committee?

A. No, sir.

Q. Or by the Chairman of the Avocado Administrative Committee?

A. No, sir.

Q. You are the manager of the Avocado Administrative Committee, are you not?

A. That is right.

Q. And you were not requested to do this by the Chairman of the Committee?

A. No.

Q. Was this prepared in the course of your employment as manager of the Avocado Administrative Committee or as a personal favor to the persons mentioned?

[fol. 39] A. This particular extract was, as I considered it, a personal favor.

Q. Did you make the personal arrangements for mimeographing it?

A. I couldn't say I made personal arrangements in reproducing the specific information for the Committee.

Q. Referring now to plaintiffs' exhibit 12 for identification, was that reproduced by the offices of the Avocado Administrative Committee?

A. Yes.

Q. Is that also true of plaintiffs' exhibit 13 which I now hand you?

A. That is correct.

Q. Do you recall the approximate date when Mr. Piowaty, Mr. Kendall and Mr. Ferguson or any of them requested you to prepare this exhibit?



A. No.

Q. Would it have been right around January 1st?

A. I think my original answer that I don't recall, sir, would serve. I wouldn't want to venture a guess into the record of this nature.

Q. Where did you obtain the figures regarding the "geography"?

A. At the office of Dr. Roy Harkness at the Sub-Tropical Experiment Station of the University, Homestead, Florida, which is located on Waldin Drive, somewhat west of Redland Road.

[fol. 40] Q. Do you recall the approximate date that you visited this office?

A. Yes.

Q. When?

A. It was the latter part of last week, but I cannot recall the exact date, whether it was Thursday or Friday, however, I believe it was one of the two.

Q. Would it have been either Thursday or Friday, the 16th or 17th of January, 1958?

A. I just don't recollect. I can consult my office calendar and confirm it.

Q. Would it have been a day or two of those dates?

A. I will say that it was one day toward the last part of last week.

Q. How long prior to that date was the request made for you to prepare this information?

A. I don't recall.

Q. Would it have been more than a week?

A. I just don't recall.

Q. Were you compensated for doing this favor for these gentlemen?

A. In which way do you mean "compensated"?

Q. By the payment of money.

A. No.

Q. Do you have any personal knowledge as to who made [fol. 41] the request that this information be obtained or these tests made by the Sub-Tropical Experiment Station?

A. Only as shown on the information extracted from the records and reproduced.

Q. Other than that you have no personal knowledge?

A. No, not personal knowledge.

Q. With whom did you talk when the request was made to prepare plaintiffs' exhibits 12 and 13 for identification?

A. What do you mean?

Q. Well, did you talk with Mr. Piowaty and Mr. Kendall and Mr. Ferguson, or either one?

A. I talked to all three of the gentlemen at various times.

Q. Did they indicate to you the purpose for which they wanted the exhibit?

A. They indicated that it was a study of maturity.

Q. As a matter of fact, Mr. Biggar, didn't they indicate that they wanted to use it in a lawsuit pending in the Federal Court for the Northern District of California?

A. I don't recall the exact words.

Q. Well, at the time they made the request were you aware that there was such a lawsuit pending?

A. Yes.

Q. And did you understand that they were going to use this material as a part of the plaintiffs' case in that lawsuit?

A. I didn't know whether they would or not. I knew it [fol. 42] was possible.

Q. At the time the request was made did you know that Mr. Piowaty was an officer of the Florida Lime and Avocado Growers, Inc.?

A. No, I did not.

Q. At that time did you know that Mr. Kendall was an officer?

A. Let me qualify that statement. You mean did I have personal knowledge?

Q. Had you been informed that he was an officer?

A. Directly, indirectly or implied?

Q. Indirectly.

A. No.

Q. You had heard it?

A. I assumed that, but I wouldn't want to inject an assumption here.

Q. You don't know for a fact that he was, but you have heard it?

A. No. I don't know up to this very moment.

Q. At the time the request was made that you prepare these exhibits and obtain this information did you know

at least that Mr. Piowaty was an officer of the Florida Lime and Avocado Growers, Inc.?

A. At the time I had no occasion to recollect whether he was an officer of that or any other organization. I [fol. 43] knew he was connected with the firm.

Q. At the time the request was made were you aware that Mr. Kendall was an officer or at least connected with the South Florida Growers Association?

A. Yes.

Q. At the time Mr. Ferguson talked to you, were you aware that he was the attorney representing the Florida Lime and Avocado Growers, Inc.?

A. Yes, and others.

Q. And the South Florida Growers Association?

A. Yes.

Q. At the time the request was made, were you aware that it was the position of Florida Lime and Avocado Growers, Inc. and the South Florida Growers, Inc. that the California Oil Tests were invalid?

A. I have heard that contended from time to time by various persons.

Q. At the time the request was made were you aware that that was their contention?

A. Yes. I may have misled you somewhat, Mr. Court, in a statement I made previously.

Q. Please correct it.

A. I don't want any insinuation or anything of that nature to rest. I would like to call your attention to the Avocado Marketing Order number 969, summarizing avocados grown in South Florida. Sub-paragraph (h) of 969.29, states that it is the duty of the Committee and of the Committee employees, according to my interpretation, to investigate the growing and maturity of vegetables and to assemble data in connection therewith. With that in mind, I did delve quite deeply into the subject.

Q. So far as you know, does the Avocado Administrative Committee consider itself a party to this litigation?

A. In no way whatsoever.

Q. Has the Committee or its Chairman given you any direction regarding your position in the litigation?

A. The question has not been raised by anyone. I have

cooperated with both sides, as you know, Mr. Fourt; I supplied you with quite considerable data also.

Q. With respect to the representatives of the industry, who are the members of the Avocado Administrative Committee?

A. The Committee is made up of nine members and nine alternate members. The members are drawn from two districts. District 1 contributes seven members and seven alternates; district 2 contributes two members and two alternates. The composition of district 1 embraces a member and alternate, plus four growers and three handlers. District 2 consists of one grower and one handler, as members and alternates.

Q. What is the geographical area covered by district 1?

A. District 2 constitutes all of the production area as defined earlier, less Dade County. District 1 consists of [fol. 45] Dade County.

Q. How are the operations of the Committee financed?

A. They are financed by an assessment placed against units of fruit shipped.

Q. Is it true that during the Committee's fiscal year ending March 31, 1957 that you received as Committee manager \$3,750.00?

A. That is correct.

Q. And will you receive a similar amount for your services during the fiscal year ending March 31, 1958?

A. I was fortunate enough to receive a slight raise.

Q. What will be your salary this year?

A. \$4,000.00.

Q. During the year ending March 31, 1957, there is an indication in the 1956-57 report that \$326.38 was paid for maturity studies. To whom was that money paid?

A. That money was paid out, but I do not recall every entry now. However, I believe that part of that was paid for assistance in the form of a laboratory janitor to assist with the tests that were being conducted by the United States Department of Agriculture, and the purchase of fruit may or may not have been included in that.

Q. Where was that particular research project carried on?

A. In the Homestead area.

Q. At which laboratory would these operations have [fol. 46] been carried on?

A. The agency that conducted these tests moved out of the location they had with the County Agent, moving to some offices located in Coconut Grove. I don't recall the exact time of the move, but possibly these were conducted at 1102 North Krome Avenue, and part of them at the plaintiffs' production area. I don't recall the exact location of their offices at that time.

Q. What was the name of the agency that conducted them?

A. It is called the Maintenance and Improvement Section of the Agricultural Marketing Service, United States Department of Agriculture.

Q. Who is the immediate head of that particular organization?

A. By "immediate head" you mean—

Q. The man or scientist who is immediately in charge of the operation.

Mr. Ferguson: You mean for the State of Florida, Mr. Fourn?

By Mr. Fourn:

Q. Do you understand my question, Mr. Biggar?

A. No.

Q. Is this organization a Federal or State organization?

A. Federal.

Q. Who is the scientist in charge of the immediate station?

A. The immediate station at Homestead is a sub-station [fol. 47] of the Orlando station. The Orlando station—the work that has been done for our Committee, has been conducted by Dr. Paul L. Harding. I don't believe Dr. Harding is the head of the station in Orlando. I just don't know. I do know that he worked on the work we were interested in, and that he delegated part of his responsibility to Dr. Hatten in the sub-station. I believe he considers that Dr. Hatten is the senior scientist in his Miami sub-station.

Q. Would this be the station that is often referred to as being located at Chapman Field?

A. That is the name of the plant division of the Department of Agriculture, and it is commonly known in this area as Chapman Field.

Q. Who is the head of the research project over at Chapman Field?

A. I believe that is Dr. T. P. Hatten.

Q. Was it to him that this \$326.38 was paid?

A. The money in that case would be to the assistant. We provided services, not money.

Q. To whom would the money have been paid?

A. I would have to search the records. I believe there were several people involved in that, because we didn't keep the same janitor at all times.

Q. Were these people working under and employed by Dr. Hatten?

[fol. 48] A. Let's say that they were paid to clean glass and things like that.

Q. Were they working under his supervision?

A. Yes, but I thought you said "employed by Dr. Hatten". There is a difference there, you know.

Mr. Fourn: Mr. Reporter, I hand you a document which purports to be the annual report of the Avocado Administrative Committee, 1954-55 season, and ask that it be marked as defendants' exhibit A for identification.

Q. Is it true, Mr. Biggar, that the Avocado Administrative Committee is a Federal Agency in the sense that it has been formed and acts pursuant to the authority of the Secretary of Agriculture of the United States Federal Government?

A. That is correct.

Q. And is it true that defendants' exhibit A for identification is an official Government publication?

A. I don't know. That thought has never occurred to me.

Q. What would you identify defendants' exhibit A for identification as?

A. It is an annual report of the Avocado Administrative Committee for the 1954-55 season.

Q. Were you manager of the Committee during the period of time covered by this report?

A. I was.



Q. Of your own knowledge you know that this exhibit, [fol. 49] as far as the Committee is concerned, is an official publication?

A. That is correct. Based on the minutes of the Committee, it is accepted as an official report.

Q. On page 7 of defendants' exhibit A for identification appears a comment with respect to the varieties Waldin, Trapp and Booth 8 varieties, that the maturity regulations were removed too early in the season. Do you recall what happened?

A. You want me to familiarize myself with that statement?

Q. Yes.

A. Where is that paragraph?

Q. It is the bottom paragraph. What happened with the varieties Waldin, Trapp and Booth 8<sup>as</sup> they were marketed?

A. That is a very ambiguous question.

Q. Did you write that particular paragraph?

A. Yes.

Q. What did you mean by the statement that the "Maturity regulations were removed too early in the season"?

A. Just exactly that. As mentioned there, the control period wasn't extended over a sufficiently long enough period. In my opinion they made a mistake there that particular season, which was reflected in the following season.

Q. In that year then there was a considerable quantity of fruit of these varieties which reached the market in immature condition?

A. I would say it reached the market in undesirable [fol. 50] condition. There were a number of complicating factors that went into that, so it would be difficult to determine exactly what the cause was.

Q. Were you apprised of the condition of the fruit when it reached the market?

Mr. Ferguson: It is not proper cross examination. It doesn't relate to anything in the direct examination, and it doesn't test the credibility of the witness.

The Witness: I would say that in this particular instance I was informed that the fruit arrived in a discolored

condition, partially due to a grade consideration and possibly due to the fact that our maturity restrictions permitted it. As I mentioned before, this has been rectified in subsequent seasons and repetition has not been observed. So as to this exact statement, sir, we had no cause to go further into it.

By Mr. Fourt:

Q. Is it true that the statement is made here:

"To cite an example, during the week ending October 16th over twenty-four thousand bushels of Booth 8 avocados were shipped, many of which were not sufficiently mature or had been held under refrigeration so long that they arrived in the market in a badly discolored or soft condition"?

Did you know also that some of the fruit arrived in the market in an immature condition?

[fol. 51] A. Let me read just exactly what I did say. I said, "many of which were not sufficiently mature or had been held under refrigeration so long".

Q. As you recall at the present moment, do you know whether you were informed as to the maturity of that fruit upon reaching the market?

A. No, only the condition.

Mr. Fourt: Mr. Reporter, I hand you a document which purports to be the annual report of the Avocado Administrative Committee for the 1955-56 marketing season, and ask you to mark it as defendants' exhibit B for identification.

By Mr. Fourt:

Q. I show you defendants' exhibit B for identification and ask you to identify that document?

A. This is the annual report of the Avocado Administrative Committee for the 1955-56 season.

Q. Is that the official report of the Committee for that season?

A. It is.

Mr. Fourt: Mr. Reporter, I hand you a document which purports to be the annual report of the Avocado Administrative Committee for the 1956-57 season, and ask that you mark it as defendants' exhibit C for identification.

By Mr. Fourt:

Q. I show you defendants' exhibit C for identification and ask you to identify it, if you will?

A. This is the annual report of the Avocado Administrative Committee for the 1956-57 season.

Q. And is it true that this report is an official report of the Avocado Administrative Committee for that season?

A. Yes.

Q. I now want to direct your attention to defendants' exhibit B for identification, particularly to the bottom paragraph of page 12, and ask you to read the paragraph, starting with "A secondary short-run effect".

Mr. Ferguson: I will interpose an objection to this as not being proper cross examination. It does not relate to any matters on the direct examination, and it is not calculated to test the veracity of the witness.

The Witness: I would like an instruction as to whether I should proceed.

By Mr. Fourt:

Q. Just go ahead and finish reading the paragraph.

A. I have read it.

Q. Is it true, Mr. Biggar, that you were the draftsman of defendants' exhibit B for identification?

A. This report was issued over the signature of Mr. Frank M. Kent, Chairman of the 1955-56 Avocado Administrative Committee. I prepared a substantial portion of this under his direction. I don't know whether you would construe that as being the draftsman.

Q. With respect to paragraph 3 on page 12, and at the top of page 13, of defendants' exhibit B for identification, [fol. 53] were you the author of that paragraph?

A. Co-author, I would say.

Q. At the time you wrote that paragraph was it your opinion that "A secondary short-run effect of maturity

regulations appears to be a tendency to encourage the picking of fruit of the regulated variety and size as soon as regulations permit, rather than to let some of it go until a later date in the season, as would normally be done in the absence of regulations"?

A. I wish you would restate that question.

Q. At the time you wrote this paragraph or at the time you co-authored it, was it your opinion that the short-run effect of maturity regulations appears to be a tendency to encourage the picking of fruit of the regulated variety and size as soon as regulations permit, rather than to let some of it go until a later date in the season, as would normally be done in the absence of regulations?

A. I wouldn't want to say that this was solely my opinion. I would say that it was the joint opinion of myself and Mr. Kent. If you take this paragraph of the report in its entirety, or this section of the report in its entirety, I would say that it would be a joint opinion, but I don't like to have you take fragmentary portions thereof and be quoted on it. I don't like to be quoted, as I consider I am being quoted now, out of context by taking just a small portion of a report and saying that is my opinion without further qualification. I might state that this report was [fol. 54] prepared to be considered in its entirety, and it wasn't prepared for bisecting.

Q. Would it not be fair to you if you were asked whether it was your opinion at that time, or you may explain your answer if you so desire?

Mr. Ferguson: I think the witness has already answered.

The Witness: I consider that that exhibit is offered in toto, and not just a fragmentary portion of it. If I were given a chance to pick out fragments of this report, I would pick out other sections to emphasize it.

By Mr. Fourn:

Q. Then would it be more correct to say that the language submitted on pages 12 and 13 of defendants' exhibit B for identification, represents the opinion that you held at that time?

A. I wouldn't go that far. I would say that it represents the opinion of the Avocado Administrative Committee who

issued this report, I being merely the tool of the Committee who prepared the report.

Q. Then would it be fair to say that this report does not reflect your opinion?

A. I don't want to take issue with you, but I want to point out that I was acting as an administrative agent of the Avocado Administrative Committee, as its manager, and not as a technical expert. I do not sit here as a technical expert. I sit here as an administrator and as such [fol. 55] do not consider myself as an expert on these matters. On these expert matters, I will refer you to my employers who are experts in the field.

Q. Then you personally do not vouchsafe the accuracy of any statements made in defendants' B for identification?

Mr. Ferguson: The exhibit contains statistical data and numerous statements of fact. It also contains discussions which are included as opinions, whereas the question put to the witness would make it appear that there is nothing in the report but statements of opinion.

By Mr. Fourt:

Q. Then, Mr. Biggar, is it your position that although you wrote, in conjunction with other members of the Committee, defendants' exhibit B for identification, that this work does not represent your views but represents other views?

A. Exactly.

Q. I direct your attention to page 14 of defendants' exhibit B for identification and ask you if you will read the paragraph entitled "1" which appears in the middle of the page?

A. Under "Quality and Orderly Marketing Recommendations"?

Q. Yes.

A. I have read it.

Q. Did you personally write that paragraph?

A. In cooperation with the members of the Committee.

Q. Perhaps subject to their direction?

A. All of this is subject to their direction.

Q. What did you mean when you wrote the last three [fol. 56] words of that paragraph, "disorderly marketing practices"?

Mr. Ferguson: I want to interpose the objection that this is not proper cross examination for the reasons already indicated.

The Witness: I want to clarify the fact that this report was typed by my secretary, who is not responsible for the opinions on this matter either. Now, what was your question?

By Mr. Fourn: \*

Q. When you used the language in this paragraph "disorderly marketing practices," as you use it in that paragraph, what did you mean?

A. That expression I believe was used to discourage a tendency to move volumes of fruit at irregular intervals. For instance, if you marketed one bushel this week and a thousand bushels next week, then one bushel the following week and a thousand the next week, that would be possibly disorderly marketing. If you divided the two thousand and two bushels equally among the four weeks, that would be in my opinion very orderly marketing.

Q. Would it be true that in order to constitute disorderly marketing practices in the Florida Avocado Industry that this increase in marketing of fruit would have to involve many thousands of bushels?

A. Not necessarily. I believe if you will refer to the other evidence submitted, the other exhibits submitted, you will find that our volume ranges upwards from less than one hundred bushels a week to more than thirty-four thousand [fol. 57] bushels a week in this particular season.

Q. Is it true that during the peak volume period of your season that it would take many thousands of bushels of additional shipments to constitute disorderly marketing practices?

A. I think that particular reference here is made to picking itself. Sometimes people choose to hold their fruit for early picking. In other words, we have a very complicated system in order to assure the market of getting matured



fruit by varieties, and that requires spot picking of these groves, and some growers complicate the orderly marketing system by withholding until all the weight restrictions are removed, taking a loss from drops, and of course that frequently causes a disorderly marketing condition perhaps with too much fruit at one time. In order to understand this, for instance, a man may be permitted to pick on a percentage of oil content, and he may choose not to pick it on a percentage of oil content—he may wait until his oil is up to twenty-eight percent instead of eight percent, however, he would be allowed to pick that fruit.

Q. I would like to direct your attention to defendants' exhibit C for identification, which is the 1956-57 AAC report, and ask if you will read to yourself the top paragraph on page 9?

Mr. Ferguson: Please note the same objection that I previously interposed, namely, that this is not proper cross examination.

The Witness: I have read it.

[fol. 58] By Mr. Fourn:

Q. Did you author that precise paragraph?

A. As I said before, in cooperation with the members of the Avôcado Administrative Committee.

Q. What was meant by the words there "but lacked the precision in establishing maturity that is deemed desirable"?

A. I won't be quoted out of context.

Q. The sentence is:

"Seedling maturity regulations tended to reduce the quantity of immature fruit of this type reaching the market, but lacked the precision in establishing maturity that is deemed desirable."

What was meant by the phrase "lacked the precision in establishing maturity"?

A. The Committee has bordered on a widely accepted acknowledgment that a universal test of maturity is a difficult, if not impossible, goal to reach. Various standards

have been measured from time to time, but to apply a uniform application to all varieties, it is an acknowledgment that we are still searching for, that is, a universal measure of maturity of avocados. We have not reached this goal, and the Committee recently recommended that we should not be deterred by the difficulties facing the solution of this universal problem, but to continue to search for a perfect measure of maturity which may apply equally well to all avocados, irrespective of source or variety.

Q. During the operation of the Marketing Order for the [fol. 59] past three years have there been any violations by itinerant truckers picking up avocados in Florida and taking them out of the state without obtaining a certificate within the State of Florida?

A. I am not in a position to say whether there have been violations. I don't believe that anyone could say whether there has been any violations.

Q. Well, during the period of time that the Marketing Order has been in effect have there been any convictions of persons who have violated the Marketing Order?

A. Do you want to qualify that, as you did the first statement, with "out of state"?

Q. In your answer you may qualify that.

A. I will qualify it. We have had several convictions, all of which have been within the state.

Q. What was the nature of the violations?

A. The violations were largely grade violations, fruit which failed to meet the grade requirements, not maturity standards; in other words, fruit which would meet the maturity standards but which had surface defects on the fruit that caused it to be ruled out for grade. Mostly the violations had to do with their failure to take inspection.

One of the requirements of the Federal Marketing Order is that each handler shall submit his fruit for inspection, and any failure to submit it for inspection is a violation of the Order. In some cases you may submit it for inspection [fol. 60] when picked. Failure to submit the fruit for inspection puts you in violation. In this case most of the violations were merely failures on the part of people acting in the capacity of handlers to have their fruit inspected.

Q. Did it happen that these persons who were convicted for violating the Marketing Order,—were they registered under the Marketing Order as handlers?

A. We had no registered handlers convicted.

Q. Were those persons who were convicted in the category of small operators or in the category of large operators?

A. I do not have the list of those who were convicted before me, and I would have to check that list in order to completely classify those who have been convicted. We do not generally have readily available classifications of that type of thing.

Q. Does the Florida regulation as it is now written affect any other avocados than Florida avocados?

A. No.

Q. Is it true that it affects only Florida handlers of avocados?

A. That is a statement that I would have to clarify. It affects any handler who handles avocados produced in Florida.

Q. Does the Florida Marketing Order affect California avocados which enter the State of Florida?

A. No.

Q. Is it true that avocados which can meet the Grade 1 [fol. 61] standard as defined in the Marketing Order, may at the same time be immature in the sense of the Maturity Regulations?

A. Technically speaking, no.

Q. Why is that so?

A. I will have to refer back again to that sub-section, if you will permit me.

Mr. Ferguson: It is attached to the Complaint as exhibit C.

The Witness: It reads: "Number 1 grade consists of avocados of similar quality characteristics which are mature but not overripe."

So if they were mature under the grade, they would be mature under the quality regulations. Therefore, technically speaking, avocados that would meet the number 1 grade could not be immature.

By Mr. Fourn:

Q. I show you plaintiffs' Exhibit 10 for identification, which is also designated "AAC-412", and ask you if you have any figures on units of Florida production intended for California destinations?

A. As previously stated, the statistics issued covering Florida avocados as represented by our exhibit 3 which you have in your hand, the yellow copy, does not indicate destination.

Q. What was the source of the information regarding the units for Florida destination?

A. As I mentioned before, I am also manager of the [fol. 62] Lime Distributors Committee, which Committee receives certificates of a slightly different form. This certificate indicates the owner of the vehicle, the license number, the address of the vehicle, and also indicates the destination in the state or out of the state.

I have prepared for my own use a table showing the various license numbers of vehicles employed in transporting avocados to Florida destinations. The statistics are checked weekly against this table showing these particular license numbers, and these license numbers are used to determine what lots of avocados are going to Florida destinations. I previously stated, sir, that we realize that certain of these avocados go out of the state, and that there are some common carriers who deposit fruit in the state that we assumed to be going out of the state, and we have assumed that these two offset one another to a large extent, and it is my opinion that these figures shown at the bottom of this AAC-412, to which we are now referring, are in substance correct.

Q. Then the figures shown on plaintiffs' exhibit 10 for identification, which is also AAC-412, are approximate only?

A. In substance that is a correct statement.

Q. Is it true that you account for the difference between "total units packed" and "units for Florida destinations", by the units that go to other destinations, which destinations you don't know?

A. That is right.

[fol. 63] Mr. Fourn: Mr. Reporter, I hand you what purports to be minutes of a meeting of the Avocado Administrative Committee held on May 14, 1957, and I will ask you to identify that as defendants' exhibit D for identification. Also let the record show that I am showing defendants' exhibit D for identification to Mr. Ferguson.

By Mr. Fourn:

Q. I show you defendants' exhibit D for identification and will ask you to identify that document, please.

A. This is a copy of the minutes of the Avocado Administrative Committee, dated May 14, 1957.

Q. I will ask you to identify the two exhibits which are attached to defendants' exhibit D for identification?

A. I have two forms attached to the minutes. One is entitled "AAC-362—LAC-269," and it is entitled "Proposed Joint Budget—Avocado and Lime Administrative Committees, 1957-58 Season". The other one is identified for our record as "AAC-363", and is entitled "Report of Subcommittee on Maturity".

Q. In your capacity as manager of the Avocado Administrative Committee on May 14, 1957, did you act as secretary of that meeting?

A. No.

Q. Did you attend that meeting?

A. Yes, sir.

Q. Who acted as secretary of that meeting?

A. The secretary of that particular meeting was Mr. [fol. 64] R. R. Kinard, the elected secretary of the meeting.

Q. To the best of your knowledge, does defendants' exhibit D for identification constitute a true and correct copy of the minutes of the meeting of the Avocado Administrative Committee held on May 14, 1957?

A. Once again I will refer you to the subsequent meeting of June 11, 1957, at which time these minutes were approved and adopted.

Q. Then it is true that to the best of your knowledge defendants' exhibit D for identification is a true and correct copy of the minutes of the meeting of the Avocado Administrative Committee held on May 14, 1957?

A. Yes.

Mr. Fourt: Now, Mr. Reporter, in order to save time, I will ask you to mark for identification as defendants' exhibits next in number the minutes of the meetings of the Avocado Administrative Committee dated June 11, 1957, July 9, 1957, August 13, 1957, September 3, 1957, September 10, 1957, October 8, 1957, November 12, 1957 and December 10, 1957.

(Said minutes mark defendants' exhibit E through L, respectively, all for identification.)

By Mr. Fourt:

Q. I show you defendants' exhibit E for identification and ask you if you will identify it, please?

A. Defendants' exhibit E for identification are minutes of the meeting of the Avocado Administrative Committee [fol. 65] of June 11, 1957.

Q. Now identify defendants' exhibit F for identification.

A. Defendants' exhibit F for identification are the minutes of a meeting of the Avocado Administrative Committee of July 9, 1957.

Q. Now identify defendants' exhibit G for identification.

A. Minutes of a meeting of the Avocado Administrative Committee of August 13, 1957.

Q. And now identify defendants' exhibit H for identification.

A. Exhibit H for identification are minutes of a "Telephone" meeting of the Avocado Administrative Committee held on September 13, 1957.

Q. Mr. Biggar, what is connoted by the words "Minutes of a telephone meeting of the Avocado Administrative Committee"?

A. First, I will refer you to the second amendment to the order regulating the handling of avocados grown in South Florida, reprinted from the Federal Register of May 21, 1957. It says, under Item 3, sub-section 969.30 (b):

"The Committee may provide for simultaneous meetings of groups of its members assembled at two or three designated places, provided that such meetings shall be subject to the establishment of telephone com-



munication between all such groups, and the availability of loud-speaker receivers for each group, so [fol. 66] that each member may participate in the discussions and other actions, the same as if the Committee were assembled in one place."

Q. Is it true that the meeting of the Avocado Administrative Committee held on September 3, 1957 was held by the participants being in communication with each other by telephone?

A. Correct.

Q. Is it true that you participated in the conferences to the extent that you were in telephonic communication with the rest of the members attending that meeting?

A. Part of the meeting was conducted in the Committee offices at Homestead, at which location we have a special telephonic arrangement, with a loud speaker, by which a group assembled in one area can converse with the group assembled in another area or areas. I was present in the room at the time.

Q. I show you defendants' exhibit "I" for identification and ask you to identify it?

A. These are minutes of a meeting of the Avocado Administrative Committee held on September 10, 1957.

Q. I show you defendants' exhibit J for identification and ask you to identify same?

A. Defendants' exhibit J for identification are the minutes of a meeting of the Avocado Administrative Committee held on October 8, 1957.

Q. Identify defendants' exhibit K for identification. [fol. 67] A. Defendants' exhibit K for identification are minutes of a meeting of the Avocado Administrative Committee held on November 12, 1957.

Q. And please identify defendants' exhibit L for identification.

A. These are minutes of a meeting of the Avocado Administrative Committee held on December 10, 1957.

Q. I show you defendants' exhibits "D" through "L" for identification, which you have previously identified, and ask if to the best of your knowledge and belief they constitute a complete set of the minutes of the Avocado Ad-

ministrative Committee during the period of time from May 14, 1957 to date?

A. I identified these individually, and have not had occasion to check to see if it is a complete list. I will be glad to check it, because I have a complete list here.

Q. Please do so.

A. If the reporter will call back to me the ones that I have identified, in the order in which they were identified, I will be glad to check them.

(Said check made between reporter and witness.)

The Witness: No; that is not all of them. We did not get the minutes of the meeting of April 9, 1957.

By Mr. Fourt:

Q. Exclusive of the minutes of the meeting of April 9, 1957, do defendants' exhibits for identification "D" through "L" constitute a complete set of the minutes of the meetings of the Avocado Administrative Committee from May 14, 1957 to December 10, 1957?

A. Yes. There was a subsequent meeting of Jan. 14th, the minutes of which have not been distributed. The minutes of the December 10th meeting were prepared at that time, and they are the official minutes. This is a sloppy way to check it, the way I did it, so I had better go back and check the ones that were called off because I may have missed some, some that I didn't check off. Having checked them off, I now state that these constitute a complete set of the minutes, with the exception of the one of April 9, 1957.

Q. To the best of your knowledge and belief do defendants' exhibits D through L constitute a true and correct list of the minutes of the meetings held on May 14, June 11, August 15, September 3, September 10, October 8, November 12 and December 10, 1957?

A. You said "list". Do you mean "copies of the minutes"?

Q. Yes.

A. I can only assume that they do. I have no reason to say anything to the contrary. I have examined them item by item, and they are complete as presented them to you.

Q. Is it true that these minutes were recorded and furnished in the usual and normal course of business of the Avocado Administrative Committee?

A. Yes.

Q. Are you personally acquainted with a person by the [fol. 69] name Fred Piowaty?

A. Yes, Mr. Fred Piowaty and I are very well acquainted.

Q. Who is Mr. Piowaty?

A. Mr. Fred Piowaty is a member of the Avocado Administrative Committee.

Q. During the 1956-57 season, was he Chairman of the Grades Sub-Committee and the "Handler Registration Sub-Committee", and a member of the Committee itself?

Mr. Ferguson: Of course all of these questions are under the objection as not being proper cross examination.

The Witness: Refreshing my recollection with the 1956-57 annual report, page 3, which has been submitted as an exhibit here, it lists Mr. Fred Piowaty as Chairman of the Grades Sub-Committee, as a member of the "Container Research Sub-Committee" and as Chairman of the "Handler Registration Sub-Committee".

By Mr. Fourn:

Q. Then is it true that in addition he was a handler member on the Committee?

A. Page 2 of this same report, which has been submitted in evidence as an exhibit, shows Mr. Fred Piowaty as a handler member from district 1.

Q. Are you acquainted with Mr. H. E. Kendall?

A. I am.

Q. Who is Mr. H. E. Kendall?

A. He is a present member of the Avocado Administrative Committee.

[fol. 70] Q. Does he serve in any other capacity or on any of the Committee or Sub-Committees of the Avocado Administrative Committee?

A. I would have to check the minutes for that. We have so many Sub-Committees that I have some difficulty in remembering who serves on which. I assume that he is, how-

ever, it would be reflected in the minutes, defendants' exhibits D through L.

Q. Is it true that Mr. Kendall was a member of the Avocado Administrative Committee during the 1954-55 season?

A. The annual report of the Avocado Administrative Committee for the 1954-55 season shows that Mr. Harold E. Kendall was a handler member from district 1.

Q. Is it true that he was a member of the Committee during the 1955-56 season?

A. He was a handler member from district 1 during the 1955-56 season.

Q. Is it true that Mr. Fred Piowaty was a member of the Committee during the 1954-55 season and the 1955-56 season?

A. During the 1954-55 season Mr. Fred Piowaty was a handler member from district 1. During the 1955-56 season Mr. Fred Piowaty was a handler member from district 1.

Q. Is it true that you serve at the pleasure of the Board?

A. Of course.

Q. A majority vote could remove you from office?

A. I understand that is true.

Mr. Fourt: No further questions.

[fol. 71] Redirect examination.

By Mr. Ferguson:

Q. Is it a part of the duty of the Avocado Administrative Committee under the Secretary's Order to aid in the investigation and furtherance of the prosecution in cases of violations of any of the maturity or quality regulations?

Mr. Fourt: I object to the question as leading. It doesn't prosecute anything. The Committee investigates and the prosecution is conducted entirely by the Secretary of Agriculture.

The Witness: Yes, it does that.

By Mr. Ferguson:

Q. I think you said something about violations within the state.

A. That is right.

Q. I think you also said that you knew of no violations with respect to shipments out of the state.

A. I know of none, but I would have to search my records on that.

Q. If there were a case of a shipment out of the state without a certificate of inspection by the joint Federal-State Inspection Service, would the Avocado Administrative Committee in due course of the performance of its duty participate in the investigation of such violation?

A. We would not actually investigate it. We would report the information which we had, if it came to us before it came to the Department of Agriculture, to the Internal Audit Division of the Department of Agriculture, who would conduct the investigation.

[fol. 72] Q. You were asked a question about a sentence that appears at the top of page 9 of the 1956-57 annual report of the Avocado Administrative Committee, the first word in the sentence being "Seedling".

A. That is right.

Q. What is a seedling?

A. A seedling is a tree which has been grown from a seed. Once again, sir, I must advise you that I am not skilled in the biological aspects. A seedling has the characteristics of the "parents"; in other words, it is not a non-descript individual.

Q. It is not yet a named variety and may never become one?

A. A seedling could be a named variety, but there may be only ~~one~~ tree. Once again, sir, I must advise you that this is out of my field, variety classifications and that sort of thing. I am not qualified to give a specific definition, however, a seedling is a single growth which someone may christen with the name of George, but it is not recognized by the trade as a variety.

Q. Turning to pages 18 and 19 of this same annual report, which pages have already been identified as plaintiffs'

exhibit 7 for identification, is there a tabulation under the caption "Seedling"?

A. There is a total of 13,124 bushels, which consists of seedlings, but in this particular instance, although it is not clearly indicated in the title, there are very few trees of fruit that have been tradenamed by individuals for personal [fol. 73] reasons as a rule, but not in sufficient quantity whereby recognition is given thereto other than as "seedling" or as an unlisted variety.

Q. Going back to page 8 of this same annual report, a copy of which has been marked as an exhibit in this case, is there mention of "Seedlings" in this schedule of shipping dates?

A. There is no mention of seedlings, but at the top of the page it is stated:

"The following shipping schedule was applied to named varieties during the 1956-57 season."

Q. If the reporter will mark this page entitled "Avocado Shipping Dates, 1956-57 season", as plaintiffs' exhibit 14 for identification.

A. That copy has been marked to show subsequent changes after the date of the issuance of this particular copy, but my copy is not marked to show these subsequent changes. I think that later in the minutes—

Q. I don't think that is pertinent to the question I am going to ask you. Is this a true and correct summary of the shipping dates fixed by the order of the Secretary of Agriculture for the season 1956-57?

A. It is.

Q. Is it the same as page 8 of the annual report except that it has some additional matter at the bottom part of the page which is not reproduced on page 8 of the annual report?

A. Page 8 is a reproduction of this form that you have [fol. 74] just submitted as plaintiffs' exhibit 14 for identification, down through all of the named varieties. At the bottom of plaintiffs' exhibit 14 for identification there are some—

Q. Wait a minute. We will come to that. Is it down to the point on the page marked plaintiffs' exhibit 14 for identifica-



tion which begins with "All weights in ounces, diameters in inches"?

A. Yes.

Q. That is the end of page 8; is that correct?

A. Yes.

Q. Everything below that on plaintiffs' exhibit 14 is not included on this page 8?

A. That is correct.

Q. Now was there a regulation of shipping dates for seedlings in the 1956-57 season?

A. Yes.

Q. And is that regulation included in this completed statement of shipping dates now marked plaintiffs' exhibit 14 for identification?

A. Yes.

Q. On plaintiffs' exhibit 9 for identification, which has already been marked as an exhibit, is a regulation of shipping dates for seedlings?

A. Yes.

Q. Does this paragraph at the top of page 9 of this annual report relate entirely to the subject of seedling [fol. 75] maturity? Suppose you go ahead and read it and then answer the question.

A. That is right.

Q. Then you were asked whether the grade regulations included any requirement as to maturity and, as I recall, you answered by reading the grade regulation as to number 1 grade and the requirement that the avocados of that grade must be mature. Now I ask you to tell us whether there is a maturity requirement included in number 2 grade?

A. There is a maturity requirement in both number 2 and 3 grades.

Q. And there is a combination grade?

A. A combination grade of 1 and 2, and they have the same maturity requirement.

Q. Are there any other grades?

A. Numbers 1, 2 and 3, and the combination of 1 and 2 grades.

Q. Each of those has a maturity requirement?

A. Yes.

Q. And isn't it a fact that all other avocados are classified as culls?

A. No, sir, that is not the case: All other avocados are classified as unclassified.

Mr. Fourt: May the record note my objection to the leading questions.

By Mr. Ferguson:

Q. Are they called culls?

Mr. Fourt: Again I object to the leading question.  
[fol. 76] The Witness: It is common practice within the industry to call them culls. In other places they might refer to them simply as "unclassified".

Paragraph (c) of sub-section 969.130, previously referred to, states:

"Unclassified. 'Unclassified' consists of avocados which have not been classified in accordance with any of the foregoing grades. The term 'unclassified' is not a grade, as used herein, but is provided as a designation to show that no grade has been applied to the lot."

By Mr. Ferguson:

Q. Now, is there any regulation covering the shipment of avocados described as "unclassified"?

A. The regulations make no mention of "unclassified". The requirement is that the avocados at the present time must meet the minimum requirement of the Avocado Administrative Committee number 2 grade, containing not less than twenty-five percent number 1 grade, as previously indicated.

Q. That would prohibit the shipment of any avocados below the grade which you have just described, the combination 1 and 2?

Mr. Fourt: I object to the leading question.

The Witness: Section 969.54, entitled "Inspection and Certification", states:

"Whenever the handling of any variety of avocados is regulated pursuant to Section 969.51, each handler [fol. 77] who handled avocados shall, prior thereto, cause each lot of avocados handled to be inspected by the Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation."

That in and of itself would prohibit the handling of any avocados which were unclassified. This sub-section 969.54 requires that they all be classified, and the order as of the immediate moment would require that they meet the minimum of AAC 2 grade and contain not less than twenty-five percent number 1 quality fruit.

Mr. Ferguson: That is all.

Recross examination.

By Mr. Fourn:

Q. Mr. Biggar, directing your attention to plaintiffs' exhibit 9 for identification—

A. Is this the publication that I have entitled "Avocado Shipping Dates, 1957-58 Season"?

Q. Yes. It is also designated AAC-417. Isn't it true that the first regulation issued by the Avocado Administrative Committee during that season provided only for a "Date A" for one or more of these varieties?

A. I would have to check to see what that first one was.

Q. Let me rephrase the question. My purpose now is to establish the progressive nature of the regulation which is set forth in plaintiffs' exhibit 9 for identification. Is it true that insofar as plaintiffs' exhibit 9 for identification is concerned that the first regulation which is incorporated [fol. 78] in this exhibit provided only an opening shipping date which is called "Date A"?

A. I don't believe that is correct. I will check that right now. I will refer to the orders themselves, Mr. Fourn, since you are making reference not to the exhibits but to the orders preceding the exhibits.

Q. All right.

A. The first of these is the one that you requested. I am looking now at Avocado Order 14, the original order. This Avocado Order 14, the original order, fixed the date of the varieties, to the extent that they used the word "varieties", and it did fix other dates for seedlings and unlisted varieties.

Mr. Ferguson: I don't think he got your question. Perhaps you had better put it to him again.

Mr. Fourn: No; that is all right.

Mr. Ferguson: That is not an answer to your question.

Mr. Fourn: Let me proceed.

By Mr. Fourn:

Q. Subsequent to the regulations which established the dates in column "A" for the given varieties, isn't it true that the subsequent regulation would establish the dates which are listed in the column following, namely, "Date B"?

A. No, that is not necessarily correct. It might have been a change of date in column A. This order 14, issued on May 21st, to become effective at 12:01 A.M., Eastern Standard Time, May 26, was in the way of a general stop order, with respect to a number of varieties and dates, prohibiting the handling of those varieties before certain dates. It [fol. 79] also gave consideration to regulations affecting varieties not listed anywhere. It was issued, according to my knowledge, on the understanding that prior to the dates shown on this order, recommendations would be made to the Secretary of Agriculture, either recommending these same dates or other dates or additional dates.

Q. Now, directing your attention back to AAC-417, being plaintiffs' exhibit 9 for identification, and limiting my question only to the variety known as "Booth 8", wouldn't the first regulation for Booth 8 have established the opening date of September 16, 1957?

A. No. It would have set the date as September 9th.

Q. And that date is not shown in plaintiffs' exhibit 9 for identification?

A. No. The subsequent amendment to that shows the date of the 16th.

Q. Following the establishment of the date which appears in "Date A", then would the next succeeding regulation have established the date of September 30th?

A. Not the same one. The 16th order established the 30th date. Suppose we go to the specific amendment instead of talking off of the record, and this should be more enlightening to all of us.

Mr. Ferguson: Incidentally, this was pleaded and admitted by the Answer, each one of these maturity orders for [fol. 80] the 1957-58 season.

The Witness: The amendment that established the date September 16, 1957, in column "A", as shown in the exhibit, also established the "Date B" of September 30th, and the "Date C" of October 14th and the "Date D" of October 28th.

By Mr. Fourn:

Q. And what is the date of the order from which you just quoted?

A. The date of the order from which I just quoted, and the title of the order which I have just mentioned, is amendment 4 to Avocado Order 14, issued on September 5, 1957.

Q. Would that have been published in the Federal Register?

A. It would have been, but I don't know the number.

Mr. Ferguson: It is pleaded as FR 7173.

By Mr. Fourn:

Q. On what date was the regulation promulgated which established the withdrawal of all maturity regulations for the Booth 8 on the date of November 18, 1957?

A. Amendment number 5 to Avocado Order 14, section (f), item 5, reads as follows:

"During the period beginning at 12:01 A.M., Eastern Standard Time, October 28, 1957, and ending at 12:01 Eastern Standard Time, November 18, 1957, no handler shall handle any avocados of the Booth 8 variety unless 2 15/16th inches in diameter."

Q. Do you have the Federal Register number for amendment number 5?

[fol. 81] Mr. Ferguson: Give me the date and I will give you the number.

The Witness: The effective date was 12:01 A.M., Eastern Standard Time, November 18th.

Mr. Fourt: I am talking about the date of the order itself.

Mr. Ferguson: The Federal Register number is 22 FR 7357.

The Witness: I believe the question was as to the date of the order. The date of the order is September 12, 1957.

Mr. Fourt: Mr. Reporter, I hand you a document headed "Recap of Effective Rules and Regulations Issued Pursuant to the Order Regulating the Handling of Avocados grown in South Florida," which is also designated "AAC-373", and will ask that it be marked as the defendants' next exhibit number.

By Mr. Fourt:

Q. I hand you a document now marked as defendants' exhibit M for identification and will ask you to identify it, Mr. Biggar.

A: The sheet is entitled "Recap of Effective Rules and Regulations Issued Pursuant to the Order Regulating the Handling of Avocados Grown in South Florida." It is further identified as form AAC-373, revised 11-12-57.

Q. Is this an official document issued by the Avocado Administrative Committee?

A. All documents issued by us are official, I presume. This was issued as a Secretary's Regulation, in fact, for [fol. 82] convenience of shippers and growers.

Q. It is an official document of the Committee?

A. The only official documents we have are our minutes and our financial reports. This is really a publication.

Q. Made in the pursuance of the administration of the Marketing Order?

A. Yes.

Mr. Fourt: Now, Mr. Reporter, I hand you a document entitled "Avocado Administrative Committee Rules and



Regulations", and will ask that you mark this document as defendants' exhibit N for identification.

By Mr. Fourn:

Q. Mr. Biggar, will you please identify defendants' exhibit N for identification?

A. Defendants' exhibit N for identification is entitled "United States Department of Agriculture, Agricultural Marketing Service, Avocado Administrative Committee Rules and Regulations, Grade Standards, as amended". It is reprinted from the Federal Register of April 13, 1956, and I would further identify it as sub-section 969.130.

Q. Is this regulation, defendants' exhibit N for identification, presently in effect?

A. Yes.

Q. When was its effective date?

A. I would have to see the original.

Mr. Ferguson: I wish to remind you, Mr. Fourn, that this [fol. 83] is exhibit C attached to the Complaint. If you want to offer another copy, that will be O.K. If you want a copy, you may detach the original exhibit from the Complaint. It is the same as exhibit C to the Complaint.

Mr. Fourn: May it be stipulated that defendants' exhibit N for identification is the same as exhibit C to the Complaint?

Mr. Ferguson: Yes.

The Witness: Mr. Fourn, do you want an answer to the question about the effective date, which I am in the process of picking out?

Mr. Fourn: Yes.

The Witness: The only thing I have here is something which shows notice of proposed amendment to rules, which is dated March 12, 1956, with a pencil notation at the top. I don't have a copy of the order itself, so I do not know the exact effective date.

Mr. Fourn: That is all.

# Redirect examination.

By Mr. Ferguson:

Q. I wish to ask you a question for the purpose of clarification. You have referred to the fact that the Secretary issued a maturity regulation dated May 23, 1957, which was a restatement of the shipping date used in the preceding season; is that right?

A. I made a statement similar to that, yes.

Q. Listing forty-five named varieties?

[fol. 84] A. I have here the original of Order 14 which lists a large number of varieties, showing only one date. It is a list of forty-five varieties showing only one date.

Q. Did you send to the growers a bulletin of the kind that has been shown here, setting up this schedule of shipping dates?

A. No, I did not.

Q. What regulation comes next?

A. You mean subsequent to that particular one?

Q. Yes.

A. Amendment number 1 would have been the first change subsequent to that.

Q. Was that June 17, 1957?

A. Amendment number 1 is dated June 13, 1957.

Q. Perhaps I stated the publication date. June 13th is the date?

A. Yes.

Q. Is that your AAC-372?

A. You mean was that reported to the growers in the form of 372?

Q. Yes.

A. AAC-372, amendment 1, is the approved dates for Fuchs, Pollock, Simmonds, Hardee and Nadir.

Q. Five varieties?

A. Yes.

Q. And in each instance it gave a Date A, Date B, Date [fol. 85] C and Date D for each variety?

A. Yes.

Q. Is it not likewise true that in each instance where dates were assigned for additional varieties, that the estab-

lishment of each variety in each instance was the four dates that you have listed as Date A, Date B, Date C and Date D?

A. That is correct.

Q. And that was always the case?

A. Yes.

Q. On the Booth 8s you have a "Date A" and later a "Date B"—

A. I might say that the only time one date is used is in the form of a stop order at the beginning of each season when we are unable to determine the actual date. These dates are used for the purpose of establishing a stop order, listing the varieties, as a method of holding it up until such time as an accurate date can be determined.

Q. Just one further question. This exhibit 9 for identification, which is a summary of shipping dates for the 1957-58 season,—is this a true reflection of the orders as made for each of the varieties in each case, including the four dates?

A. As made and possibly as amended at later dates. I believe these first five remained unchanged, and it is possible that one of the subsequent amendments changed one or more of these dates. As of the time of the issuance of this AAC-417, which you have identified as plaintiffs' exhibit 9, that encompassed all of the amendments for all [fol. 86] of the varieties shown therein, as taken from the Secretary's Orders.

Q. Did each order and each amendment, after that first one that we have called a stop order, in every instance assign the four dates, A, B, C and D as you have them listed here?

A. Yes.

Mr. Ferguson: That is all.

Recross examination.

By Mr. Fourn:

Q. Isn't it a fact that AAC-417, which is plaintiffs' exhibit 9 for identification, was true and correct as of October 8, 1957, the date of this issuance?

A. As I explained earlier, it was in anticipation of regulations being issued on October 14th, in accordance with the recommendations that the Committee made on October 8th.

Q. As to one or more of these varieties, isn't it true that there may have been an amendment to the original date in each case until the later amended date would appear?

A. Correct.

Mr. Fourt: I have nothing else.

Mr. Ferguson: I think it would save some time if the reporter would mark these nine pages as plaintiffs' exhibit 15 for identification.

Redirect examination.

By Mr. Ferguson:

Q. Do these nine pages now marked plaintiffs' exhibit 15 for identification comprise all of the bulletins issued by [fol. 87] the Committee, setting forth the maturity orders made by the Secretary of Agriculture for the season 1957-58, other than the order which we have mentioned of May 23, 1957, that being at least its publication date?

A. Yes, it encompasses even part of that. It does state a portion of the missing order of May 23, 1957, but it doesn't list the schedule as such. It does include a mention of the shipping dates that you have on there, and perhaps the last six or seven remain unchanged pending further recommendations as the season progresses.

Q. Now turning to the second page of this bulletin AAC-372, dated June 13, 1957—you have already answered that that lists five varieties and four dates for each variety; is that correct?

A. Yes.

Q. Is that an exact copy of the Secretary's Order?

A. Yes.

Q. And the page dated July 11, 1957—

A. That lists five additional varieties.

Q. And so that makes a total of ten that you have mentioned?

A. Yes.

Q. And this is a copy of the order?

A. Yes.

Q. The next one is dated August 14, 1957.

A. Yes; that added one.

Q. Added one more?

[fol. 88] A. Yes; Fairchild.

Q. And the one of September 11, 1957, does that add some more varieties?

A. It contains twenty-four varieties.

Q. And in each instance with how many dates?

A. All four dates.

Q. Is that an exact copy of the Secretary's Order?

A. Yes.

Q. Does this bulletin of September 11, consist of two pages, one marked AAC-405, and one marked AAC-407?

A. Yes.

Q. Does AAC-405 contain a preliminary schedule for some more varieties?

A. Yes.

Q. Does AAC-407 show that this preliminary schedule has been made official by approval of the Secretary of Agriculture?

A. No.

Q. It does not?

A. No. This schedule shown on AAC-407, is a recapitulation of the maturity dates, issued by the Secretary of Agriculture up to and including September 11th, named varieties and seedlings alike.

Q. What is the next one?

A. The next one is dated October 9, 1957, and it is designated AAC-418, bulletin 57/58-8, and it refers back [fol. 89] to the preliminary schedule, AAC-405, and indicates approval and recommendations by the Committee of these dates. It also calls attention to all concerned to the pink schedule, which we have here as exhibit 9, which is a recapitulation of all of the weights and dates and sizes in their final form.

Q. You have already stated that although this is published as of October 8, 1957, it was a few days later before it was made an official order by the Secretary of Agriculture?

A. That is right.

Q. Now again, and finally, in each instance when another variety was issued, or when another variety was named, the four dates are assigned, namely, A, B, C and D?

A. Correct.

Mr. Ferguson: That is all.

Recross examination.

By Mr. Fourt:

Q. During the 1957-58 season to date has the Secretary of Agriculture declined to issue any of the orders recommended to him by the Avocado Administrative Committee?

A. Yes.

Q. In what respects or can you give some examples?

A. I can't tell you right offhand, but I can go back through the recommendations and through the orders and try to pick them out, where the Committee has recommended action and the Secretary of Agriculture refused to issue orders thereon.

Q. Did the Secretary of Agriculture decline to issue any [fol. 90] maturity regulations recommended to him by the Avocado Administrative Committee?

A. No.

Q. Is that same situation true with respect to the maturity regulations issued by the Secretary of Agriculture in the 1954-55 season and the 1955-56 season?

A. You mean have they always followed the Committee's recommendations?

Q. As to maturity only?

A. Yes.

Q. Is the same thing true of the season 1956-57 as to maturity regulations only?

A. As to avocados produced in Florida the Secretary has always followed the Committee's recommendations.

Mr. Fourt: That is all.



Redirect examination.

By Mr. Ferguson:

Q. One further question. At the meetings when these recommendations were made by the Avocado Administrative Committee, was there present a representative of the Secretary of Agriculture?

A. I cannot vouch for every instance, but in practically every instance, the answer would be yes. I believe there was one meeting, the telephone meeting, when we didn't have a representative of the Department of Agriculture present. We have quite a large number of representatives of the Department of Agriculture at each meeting, but [fol. 91] they may not be the direct representative of the Secretary as a field representative. I believe in most instances, in fact I am sure, that we have had a full representation present to observe the proceedings.

Q. Would it be the same man in each of these meetings?

A. No. Sometimes the Orlando field representative in Florida is present, or he sends his assistant. At times these meetings are attended by Mr. M. F. Miller, as the Florida field representative of the Department of Agriculture, Marketing Division, and his assistant, Mr. W. R. Cleveland, has attended meetings in his place at times.

Q. Do you have any personal knowledge of what happens in Washington after these recommendations are sent there?

A. No, sir.

Mr. Ferguson: That is all.

And Further Deponent Saith Not.

David M. Biggar, Deponent.

(Adjournment to 9:30 A.M., January 22, 1958.)

[fol. 92] Resumed at 9:30 A.M., January 22, 1958.

Appearances: Same as heretofore noted.

DR. ROY W. HARKNESS, a witness on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ferguson:

Q. Dr. Harkness, will you please state your name in full?

A. Roy W. Harkness.

Q. Where do you live?

A. I live in Homestead, Florida; Route 1, Box 426.

Q. What is your profession?

A. I am a chemist with the Sub-Tropical Experiment Station.

Q. Are you classified as a plant chemist?

A. No; I am listed as an associate chemist there.

Q. In what field of chemistry?

A. I have been working in various fields. I have been working some on plant nutrition, and also have been working on the maturity of avocados and mangoes.

Q. What has been in general your training and experience?

A. Previous to coming to the Experiment Station?

Q. Yes; going back even to your school days.

A. Well, I got my Ph.D in Physical Chemistry at the University of California in 1928. I worked for the Department of Agriculture in Washington on Catalysis Research, [fol. 93] in the research laboratories of fixed nitrogen. I worked there until 1935, I believe, and then I worked for the Houdry Products Corporation of Pennsylvania, in their research department, until 1946, and since that time I have been at the Experiment Station down here.

Q. Is this an Experiment Station of the University of Florida?

A. Yes, it is.

Q. What is your position there?

A. Associate chemist at the present time. I started as an assistant chemist.

Q. And you have been at this Experiment Station how long?

A. Twelve years now.

Q. Are you a member of the faculty of the University of Florida?

A. Technically, yes.

Q. You have already indicated that you have engaged in research work on the subject of maturity of Florida avocados?

A. Yes.

Q. What was the purpose of that research?

A. The original purpose was to try to find some means of indicating when the avocados would mature.

Q. You were seeking a scientifically valid method of determining maturity?

Mr. Fourn: I object to the question as leading.

The Witness: Yes.

[fol. 94] By Mr. Ferguson:

Q. Doctor, was this research project of the University of Florida, to which you have referred, given some designation by number?

A. Yes. It started originally before a number was given to it, but after we had been working on it for some time we wrote up a project statement and it was given a number at that time. I will have to look up the number, if you wish to know the number.

Q. It would be convenient to have it, Doctor.

A. The number is 675.

Q. When did this research which you undertook on the subject of maturity of Florida avocados begin?

A. I believe it started in the fall of 1951.

Q. At whose request was it initiated?

A. Well, it was partly on our own consideration of the need of it, and partly on our own consideration of the Experiment Station, and also at the request of avocado packers and growers.

Q. Where was the research carried on?

A. At the Experiment Station.

Q. In this research project, did you give consideration to the measure of oil content of the fruit as a possible standard of maturity?

A. Yes, we did.

Q. What experimental work, if any, did you do with reference to the oil content of Florida avocados?

A. That was the principal part of the research at first. [fol. 95] We started out by measuring the oil content of avocados at various times through the season, starting at a time at which we thought they were still immature, and continued on through the period in which the various varieties were picked for the market.

Q. In what years were those oil content tests made?

A. Every year from the fall of 1951 on we made some oil content tests.

Q. These oil tests were all made at the Sub-Tropical Experiment Station?

A. Yes.

Q. Where and how were the samples obtained?

A. They were obtained from various groves throughout Florida. Some was fruit grown at the Experiment Station, and quite a portion was from various commercial groves in and around Dade County, and very few from groves in other parts of the State.

Q. In general, Doctor, when were these oil content tests made in relation to the time of the picking of the fruit?

A. In a large proportion of the cases, sir, they were made on the same day, or they were made within two days after picking, excepting in the case of certain special investigations which we were making as to the oil content, they were made within two days after picking. In other words, aside from these special investigations, the oil content tests were made within two days after picking, and usually on the same day.

Q. What method did you use to test the oil content?

[fol. 96] A. We used exactly the method used in California, with the halowax oil and the shaker bomb.

Q. What equipment did you use?

A. We used the shaker bomb, and we used the refractometer for getting the refractive index, and also miscellaneous laboratory equipment.

Q. Do you know where you got the equipment?

A. The refractometer was gotten from one of the chemical supply houses, one of the main chemical supply houses here, and the shaker was bought from a firm in California which makes shakers out there. I have forgotten the name of the company.

Q. Did you keep a record of these oil tests?

A. Yes, we kept a record of all of the oil tests.

Q. Do you have that record here?

A. Yes. That record is in these two books where these papers are placed in the books. These are the original records.

Q. Do you have a typewritten copy?

A. Of many of them, but not all of them. All of the original records are in these two books.

Q. Would you please add to your last answer a statement of the page numbers in the books? Possibly you can do that better than I can.

A. Here is one book which I have designated as number 7.

Q. Book number 7?

A. Yes. Starting on page 30, we have data for 1955, [fol. 97] starting in November. On page 32, we start with October, 1956, and we run over to page 89.

Q. Continuously from page 32 to page 89?

A. No, they are not continuous. They go over to page 46.

Q. Pages 32 over to 46?

A. That is right. That is December, 1956. On page 50, we start in with July 13th, 1953, and to over to page 90, which is January, 1954.

Q. You mean that page 90 begins 1954?

A. It ends on January 2nd. On the same page I started in with June, 1954, being page 90.

Q. Do you have more pages there for 1954?

A. Yes, over to page 95, which is October, 1954. Then it is continued on page 110 over to page 123, which is January, 1955. On that same page I start in with May, 1955, there being just one page there. Then over to page 126, which is June, 1955, to 129, which is November, 1955.

I will start now with the next book, book number 8. In my book, book number 8, on page 78, I have October, 1957, to page 80, being November, 1957.

Q. Doctor, I didn't catch anything for 1952.

A. Apparently I don't have those in these books; apparently 1952 is in other books.

Q. You have it in some other form with you this morning?

A. I have some typewritten results, yes.

[fol. 98] Q. May I see those?

A. Yes. Here is a typewritten summary of some of the 1952 data.

Q. You have handed me seven typewritten pages. What is recorded on these seven pages, in general, Dr. Harkness?

A. In general, sir, it is a comparison of the oil content of different fruits on the same tree, of different trees in the same grove, and of different groves. Some of them are the Lula variety and some of them are the Booth 8 variety.

Q. Are the entries on these typewritten pages taken from book records such as books 7 and 8?

A. Yes.

Q. But they are not as comprehensive as in the books?

A. No.

Q. Are there other matters reported in these books, numbers 7 and 8, and similar books, of the Experiment Station?

A. Yes, there are other things recorded in them. Book 7 is entirely on avocado research, and book 8 is on mango research, as well as avocado research.

Q. That is a rather helpful statement, Dr. Harkness. Book 7 relates to avocado tests only.

A. Book 7 all relates to avocados, but not all of the pages relate to oil content tests. There are a few pages on leaf analyses, and there are twenty pages on respiration studies of avocado fruit.

[fol. 99] Q. You have already designated the pages which contain the oil content tests?

A. Yes.

Q. Now I will ask you the same question as to book number 8. Are the only pages in that book which record oil content tests, pages 78 to 80?

A. Yes, I believe so. Most of the rest of the book is on mango maturity work.



Q. May I again see the typewritten pages?

A. Yes.

Q. To what years are the entries on the typewritten pages limited?

A. 1952, 1953 and 1954.

Q. Three years?

A. Yes.

Q. Let me ask you this question, Dr. Harkness: If we are permitted by you to make photostatic copies of the pages which you have indicated in these two books, with the books being returned to you during the day or at least by tomorrow, would we then have a record of all of the tests made in the years beginning 1953?

A. Yes.

Q. And then if we took the entries for 1952 on the typewritten pages, likewise to be photostated and returned to you, would we have a complete record; is that correct?

A. You would not have all of the record pertaining to 1952, the early part.

[fol. 100] Q. We would only have part of 1952?

A. That is right. You would have a large part of it, but not all of it.

Q. And the 1953 and 1954 entries in the typewritten form would be a duplication of what we found in books 7 and 8?

A. That is right.

Mr. Ferguson: Now, with leave of the witness, I propose to have photostats made of the pages indicated in books 7 and 8, and for simplification, although I realize that there is some duplication, including the seven typewritten pages, all of which have been marked collectively as plaintiffs' exhibit 16 for identification—in other words, when the photostats are obtained I propose to offer the photostats in evidence. All I am asking of counsel now is an understanding that no objection will be made on the ground that we are using photostats.

Mr. Fourn: No objection will be made to the use of photostats, but we are not stipulating that they may be introduced in evidence.

By Mr. Ferguson:

Q. Now, Dr. Harkness, what was your personal part in the making of these oil tests?

A. In some cases, particularly with the early ones, I made the determination myself. Later on, I supervised them.

Q. That applies to all tests recorded in these books?

A. They were all made under my supervision.

[fol. 101] Q. And do you say that they are true and correct?

A. Yes, to the best of my knowledge.

Mr. Ferguson: Now, Mr. Fourn, if you wish to examine on voir dire at this point, you may do so.

Mr. Fourn: May I see books 7 and 8, as well as the seven typewritten sheets?

Mr. Ferguson: You certainly may.

Mr. Fourn: Rather than interrupt at this time to examine on voir dire, could we defer that until the time for cross examination?

Mr. Ferguson: Yes.

By Mr. Ferguson:

Q. Dr. Harkness, did you in each of the years 1952, 1953, 1954 and 1955 publish any Florida Agriculture Experiment Station reports and statements of the nature of your studies on State Project 675, and your conclusions or tentative conclusions?

A. Yes, I did.

Q. Do you have with you copies of those volumes for the four years I mentioned?

A. Yes, I do.

Q. Will you please check these page references and see if they are correct? Your 1952 report is at page 287?

A. Correct.

Q. Your 1953 report is at page 329?

A. Correct.

[fol. 102] Q. And your 1954 report is at page 292?

A. Correct.

Q. And your 1955 report is at page 315?

A. Correct.

Q. Now, Dr. Harkness, will you please tell us what observations you made in the course of this research project regarding the oil content as a standard of maturity for Florida avocados?

A. Well, the observations I made are written up in these reports.

Q. We must hear them from you, Doctor.

A. Well, do you want me to read them?

Q. If necessary to refresh your recollection.

Mr. Fourn: To which we will object. This is the type of matter that we feel we should make objection to at this point. Reading of the material into the record of course does not obviate our objection to their materiality.

By Mr. Ferguson:

Q. I am not asking you, Dr. Harkness, merely to read the report. I am asking you to now state your observations, and in the course of your statement you are at liberty to refer to any papers that will help your recollection. I take it that your answer will be predicated upon your own recollection.

A. Several observations were made in regard to the value of oil content. One was that several of the earlier varieties matured to a satisfactory quality as judged by [fol. 103] the people who eat them at a point at which time the oil content was in the range of three to six percent.

Later in the season the late maturing varieties did not reach or approach edible condition, as judged by the people who ate them, until the oil content was comparatively high, perhaps seven to eight percent, or even higher. In other words, the quality of the avocado, as judged by the people who ate them, did not correlate with the oil content when you consider all of the different varieties together. In other words, the early varieties would begin to attain maturity before the oil content ever reached a high value. I don't want to be exact on this without looking at the book, but I believe the book will show that the Pollocks showed an oil content of five percent. The Waldins did not reach eight percent, let's say, until December, which is the normal time for picking Waldins.

In our research work we made it possible that the real measure of maturity was the quality of the avocado as judged by the people who eat it.

We were not looking for any particular food value; it was just a matter of having a fruit which was enjoyable to eat and at the same time one which would have a satisfactory food value. There was no attempt to arrive at a measure of the value of the fruit based upon the number of calories or anything like that.

Aside from that, we ran into serious difficulty in using oil content as a measure of maturity because of the variability of oil content we found in different fruit. [fol. 104] Then on the same tree fruit picked at the same time would vary a large amount. The fruit would look alike and would be off of the same part of the tree, but when the oil content was determined there would be a three percent difference in the oil content; for instance, one fruit might contain six percent and another nine percent, off of the same tree. There was no correlation that we could find between the variation in oil content and the flavor of the fruit.

If we took an average of ten fruit from a given tree, we would get a certain value which we could duplicate fairly well, and if we took ten more fruit from the same tree, and compared them with the other ten as to oil content, sometimes we would find a measurable difference between the two trees, even in the same grove. Then if we averaged up the different values taken from the different trees in the same grove, on the same variety, and compared those with similar averages obtained in another grove, we might then get different values in the other grove. In other words, we couldn't observe any differences in the eating quality of the different fruits or different values from the different groves. While admitting that we didn't actually run any taste panels to afford conclusive proof that the flavor was the same, we did observe, from two or three observations, that they didn't show any taste variation.

Q. You mean difference in flavor?

[fol. 105] A. Yes, in spite of the difference in oil content. These variations between different groves were sometimes

very great. For example, in this typewritten data, which has already been submitted here, but which is also given more emphasis in the annual report,—just glancing at that data here, you will see certain observations. To illustrate, from one block of trees at the Experimental Station, the Lula variety, around the latter part of November, ran around ten to thirteen percent oil. The oil variation in another block of trees at the Experiment Station, at that same period, ranged from six to nine percent oil.

Q. Dr. Harkness, incidentally, how is the station grove designated in the record?

A. One is designated as block 9, and these block numbers refer to ten acre blocks. As I said, one is block 9, and another is block 5. It so happens that in the case of these Lula trees, the block 9 trees are much younger than those in block 5. The block 5 trees are quite old, twenty years or more, and the block 9 trees are less than ten years old.

Q. Was there any variation corresponding with the age of the trees?

A. We didn't find that constant variation in other groves. It so happened that these two groves were different, and it so happens that they were of different age, however, we drew trees of different ages from commercial groves, and we failed to find such a constant variation.

[fol. 106] Q. Doctor, if I may inject this question, did all of these trees in the station groves receive the same treatment in the way of fertilizer?

A. The fertilizer program was very nearly the same, and the spray program, to the best of my knowledge, was identical. One of these groves, block 9, was a grove where limited fertilizer tests were being run, and certain trees received an application of magnesium, and certain others didn't receive it; however, those two treatments showed no difference in the oil content.

Our general conclusion about oil content as a method of measuring maturity of avocados was that it would be very difficult to apply on account of these variations between different fruits and different trees in different groves, which we had no way of explaining, and to the best of our knowledge did not correlate with the quality of the fruit.

Q. That would be within the same variety?

A. Yes.

Q. Of course if the question is broadened, do you have an opinion whether a fixed percentage of oil content is a scientifically sound standard for maturity of all varieties taken together?

A. Well, it seems to me that it is not scientifically sound to use one measure for varieties of any kind of fruit that varies as much as the different varieties of avocados.

Q. In addition to State Project 675, and particularly in the years 1954, 1955, 1956 and 1957, were oil tests of [fol. 107] avocados made at the Sub-Tropical Experiment Station by you or under your supervision upon application by growers and handlers of avocados in Florida?

A. Yes, they were.

Q. Were those limited to any particular area?

A. No. Our policy was to make oil determinations in limited number for any grower or packer who brought the avocados into us.

Q. Did you make a record or cause one to be made of these oil tests?

A. Yes, they were all recorded in these books.

Q. Are they included in these books 7 and 8?

A. Yes, they are included on the pages which you already have.

Q. Is it indicated in the record in each instance who applied for the oil-tests?

A. The designation in the book is either the person who brought the fruit in or the grove from which the avocados came.

Q. Are these records of each test segregated some way in the book?

A. Only by date. There are six or seven by date.

Q. Can you tell us on what pages we would find them?

A. They are on some of these pages which you already have. As a matter of fact, they are listed chronologically by year. For instance, all of these in book 8 were run at [fol. 108] the request of someone else, and all of those in the year 1956, as well as 1955. Prior to 1955 some were requested at times and others were for our research program.



Q. Doctor, if you will please look at these pages which are marked for identification as plaintiffs' exhibits 12 and 13—

A. I have seen copies of those. I think I have copies here.

Q. Have you had an opportunity to compare the entries on these exhibits with the entries in your book?

A. Yes, I compared a few entries on each of these pages with entries in my book, and in each case where I compared them they checked.

Q. Do these exhibits, plaintiffs' exhibits 12 and 13 for identification, correctly list the oil tests applied for by Florida Lime and Avocado Growers, Inc. and by Mr. Kendall, of South Florida Growers Association, Inc.?

A. As far as I checked them, they are correct and represent what they say.

Mr. Ferguson: I will now state to counsel that upon the testimony of Dr. Harkness exhibits 12 and 13 will be offered in evidence.

By Mr. Ferguson:

Q. Just one other question, Dr. Harkness: Were these tests to which you have been testifying composite tests of a number of fruit studies or simply separate tests of the individual avocados?

[fol. 109] A. In nearly all cases, but not all of them, they were composite samples of several fruit and the number is designated here on the sheet.

Q. So that the resulting percentage represents then the average of the number of avocados forming the sample in each instance?

A. That is right.

Mr. Ferguson: You may cross examine.

Cross examination.

By Mr. Fourt:

Q. Dr. Harkness, who is your immediate supervisor at the Experiment Station?

A. Dr. George D. Reuhle.

Q. What is his title?

A. I think he is director of the Station.

Q. I take it, Dr. Harkness, that your salary is paid by the University?

A. Yes.

Q. With respect to the avocado maturity studies at the Experiment Station, when did they first begin, approximately?

A. Approximately in 1951.

Q. Were you engaged in that experiment at its inception?

A. Yes.

Q. Dr. Harkness, I show you your book number 7, at page 30, and ask you if you have any personal knowledge as to the source of the sample which is on the top of the [fol. 110] line where the "Weight" is 1784?

A. You mean the source of the fruit?

Q. Yes. I mean personal knowledge to you as distinguished from what someone may have told you.

A. I didn't see the fruit when it was brought into the laboratory.

Q. Insofar as source of that particular sample is concerned, you would have to rely on what someone told you?

A. Yes.

Q. Would that be true of all of the fruit covered in all of the tests indicated in books 7 and 8, and also in the mimeograph sheets?

A. No, not all of them. It is not true of the ones that were taken for research purposes. I would have to check through to tell you which ones it is not true for, but much of that fruit I do have personal knowledge of.

Q. Is it true that the fruit of which you have personal knowledge as to its source, would be the fruit that came from groves 5 and 9 at the Experiment Station?

A. It would include those, yes.

Q. Doctor, I show you plaintiffs' exhibits 12 and 13 for identification, which purport to be copies of entries in your books 7 and 8; is that correct?

A. Yes.

Q. As to those samples where the tests were made at the [fol. 111] request of South Florida Growers Association, Inc., which is shown on plaintiffs' exhibit 13 for identifica-

tion, would you have personal knowledge of the source of that fruit and the conditions under which it was picked?

A. In most cases, sir, I did not see the fruit until it came into the laboratory.

Q. Could you say that that would be true in ninety per cent of the cases as to the fruit submitted to you by South Florida Growers Association, as shown by plaintiffs' exhibit 13 for identification?

A. Yes, I believe that would be true regarding those pages.

Q. With respect to the first entry on the top of plaintiffs' exhibit 13 for identification, I note that the grove is denoted "Chandler."

A. Yes.

Q. Do you know the acreage included in that grove?

A. No, I do not. Chandler has several groves. I don't know which grove this came from.

Q. Do you know how many trees there were in the grove from which that fruit was a sample?

A. No.

Q. Turning to the sixth item on the first page of plaintiffs' exhibit 13, denoted "English" grove,—do you know how many acres are in that grove?

A. No.

[fol. 112] Q. Do you know the number of trees per acre of the English grove?

A. Not specifically, but I know the general planting scheme around through the area.

Q. In that area?

A. Yes, I would say I know it approximately.

Q. But you could not at this time give a correct figure as to the number of trees?

A. No.

Q. Dr. Harkness, as to the English grove, do you know whether the five samples which are shown there were selected at random from the grove?

A. All I know is that we gave directions to all of these people who were in the habit of bringing samples in to select them at random. I have no personal knowledge, however, that they did so.

Q. Do you know what relation these five samples had to the total number of trees in the English orchard?

A. Since I don't know the size of the grove, I couldn't give you that answer.

Q. Doctor, are you acquainted with the Latin-square method of sampling?

A. I am vaguely familiar with it. I never used it myself.

Q. I take it that you are familiar that the Latin-square system of dividing the area of an orchard into small [fol. 113] squares?

A. Yes.

Q. Did you give instructions to Mr. English or to the person responsible there to divide the orchard by the Latin-square method or any other method to insure that the samples selected would be at random?

A. No.

Q. Do you know whether that was done, of your own knowledge?

A. I think it is safe to say that I don't know.

Q. Did you give any instructions with regard to the size of the samples that Mr. English should bring in?

A. Yes.

Q. What were those instructions?

A. The instructions in general that we always gave them was that there should be at least five fruit.

Q. Would that instruction as to the five fruit apply regardless of the size of the orchard from which the samples were taken?

A. Yes.

Q. Do you have any knowledge as to whether these samples could be considered orchard-run fruit or whether they were selected fruit on the basis of quality?

A. I don't know.

Q. Of your own knowledge, with respect to the English [fol. 114] grove, do you know whether enough samples were taken to account for variations between trees in the grove?

A. No.

Q. Did you give any instructions that such a factor should be taken into account in selecting the number of fruit and the selection of the trees from which the fruit was to be taken?

A. The only instructions we gave was that there should be at least five fruit and that the fruit should be selected at random.

Q. Do you have any personal knowledge with respect to the five samples which appear to have come from the English grove, as noted on plaintiffs' exhibit 13, as to the actual date the samples were picked?

A. The only knowledge we had was that we would take the word of the person who brought the fruit in to the effect that it was picked on the date he said it was.

Q. Is it true that your answer would be the same as to all of the samples and all of the groves listed on plaintiffs' exhibit 13, if I asked you the same question with regard to your personal knowledge as to the picking date, the source of picking, the size of the grove and the number of trees per acre?

A. In most cases, yes.

Q. Would it be fair to say that it would be true in at least ninety-five percent of the cases?

A. I believe so.

[fol. 115] Q. Isn't it true for your purposes that these factors that I have described, such as the sufficiency of the sample, whether it was picked at random, or the grove from which picked,—would be immaterial for the purposes for which you were making the tests?

A. The only purpose we were making the tests for was to give the person who brought the fruit in an indication of the oil content of the fruit, and that information did not personally apply to us because we were not going to use the data for ourselves.

Q. Then insofar as your tests were concerned, the tests showed only the oil content of these five fruit when measured according to your techniques?

A. Yes.

Q. With respect to the English samples, which appear to be five in number and which appear on plaintiffs' exhibit 13 for identification, do you have any personal knowledge as to how long the fruit was retained by Mr. English or his employees prior to the time it was given to you or someone at the laboratory?

A. No.

Q. Would your answer be the same if I asked the same question regarding all of the rest of the samples and groves which are listed on the several pages of plaintiffs' exhibit 13 for identification?

A. It would be true in most cases.

Q. If I asked the same question of you regarding your [fol. 116] personal knowledge of the picking date and the conditions under which the samples were selected, the size of the orchard and the length of time the grower retained the samples after picking before delivering to your laboratory, would your answer be the same as to the tests as indicated on plaintiffs' exhibit 12 for identification?

A. Yes.

Q. Is it true, Dr. Harkness, that your research project on maturity ended in 1954?

A. No. Insofar as oil content goes, it ended in either the end of 1954 or January of 1955.

Q. At the latest it ended in February of 1955?

A. As far as oil content goes. I did some other work on maturity on another angle the next season.

Q. That would be perhaps on density?

A. No; it was on respiration work.

Q. Subsequent to February, 1955 the oil tests were made at the request of the various members of the industry who would send in samples to you?

A. Yes.

Q. And these oil tests were made as general information to the industry rather than as a part of a specific project at the Experiment Station?

A. Yes.

Q. With respect to the fruit which you sampled as a part [fol. 117] of your research project in 1954, Dr. Harkness, did you personally go out and supervise the picking of the fruit in groves 5 and 9 at the Experiment Station?

A. Yes, I did. As a matter of fact, I picked it myself in most cases.

Q. So as to those tests then you would have personal knowledge from the time of picking clear through the testing?

A. Yes.

Q. As a part of the 1954 research project did you request



the industry or members thereof to furnish you with avocado fruit?

A. I believe so. I did in two or three seasons, and I believe 1954 was one of them.

Q. As to the samples which did not come from the Experiment Station groves, did you have any personal knowledge as to the manner in which the samples were selected?

A. Yes. I went to the groves and picked them myself.

Q. Then so far as the research project is concerned, you had personal knowledge as to the selection of the samples and the following of the samples through the laboratory where the tests were made of the samples?

A. Yes.

Q. Dr. Harkness, I show you plaintiffs' exhibit 12 for identification and ask you to look at the top line on page one and state if you can recall now whether you personally selected the five samples from the Piowaty grove?  
[fol. 118] A. I don't remember selecting them.

Q. Is it possible that in the alternative you could have personally selected them or is it possible that Mr. Piowaty or his representatives may have selected them?

A. In all probability they picked them because it was five fruit, whereas if I had selected them for research work, I would have picked ten.

Q. Is it true that on page four of plaintiffs' exhibit 12 for identification that if none of the size samples shown were "ten",—would that indicate that you personally selected none of those samples?

A. That is right.

Q. Then it would also follow, would it not, Dr. Harkness, that none of the samples tested, as shown on page four of plaintiffs' exhibit 12 for identification, would appear in the results of your research project?

A. That is probably correct.

Q. Now, Dr. Harkness, I show you the first page of plaintiffs' exhibit 13 for identification and ask if you presently remember whether you personally selected the samples shown as coming from any of the groves on that page?

A. I don't remember personally selecting them at all.

Q. On page one of plaintiffs' exhibit 13 you indicate ten

samples from Kinard's grove. Is it possible that you personally selected that sample in the orchard?

[fol. 119] A. No, I never took any samples from Kinard's grove.

Q. There is indicated on page one of plaintiffs' exhibit 13 for identification five samples from the McMillan grove and eleven samples of Booth 7s from "Blank" grove. Is it probable or improbable that you personally selected those samples?

A. It is improbable.

Q. It is improbable that you personally selected any of the samples shown on page one of plaintiffs' exhibit 13 for identification?

A. Yes.

Q. Is it not also true that the results of the oil tests from samples shown on the first page of plaintiffs' exhibit 13 for identification were not shown in the results of your research project during 1954-55?

A. Yes.

Q. Now, Dr. Harkness, I show you page 78 of your book number 8, and ask you if you can identify for the record the approximate dates when the tests on that page were taken?

A. There were two on October 6, 1957, two on October 8th and several on October 16th, and so on.

Q. And what is the latest date shown there?

A. The latest date on this page is November 1st.

Q. With respect to the sample tests as shown on page 78 of your book which has been marked number 8, do you have any personal knowledge as to the conditions under which [fol. 120] that fruit was picked in the orchard?

A. No; it was brought to the laboratory for testing.

Q. Then is it true that as to the samples shown on that page, Dr. Harkness, that the only knowledge you would have would be knowledge given to you or your associates at the time of the delivery of the fruit to the laboratory?

A. Yes.

Q. With regard to the fruit shown on page 78 of your book 8 was the diameter of that fruit measured?

A. No, but it was weighed.

Q. And what terms of weight were used?

A. We used the composite sample, weighing the composite sample.

Q. At the time of weighing was the weight in grams translated into ounces?

A. No.

Q. During the tests made at the request of members of the industry did you ever have occasion to translate the weight shown in grams to weight shown in ounces?

A. Occasionally.

Q. For what purpose did you want to translate it into ounces?

A. So that the growers would know what the size was in ounces.

Q. Then the weight was translated for the convenience of [fol. 121] the growers and the packers?

A. Yes.

Q. With respect to the fruit which is represented by the entries on page 78 of your book, do you recall whether any of that fruit was covered by a Federal-State Inspection Certificate?

A. No, not when it was brought to us, that is, insofar as I know.

Q. Then so far as you know it had never been inspected?

A. That is right.

Q. Dr. Harkness, with respect to the fruit which is represented by the entries on page 78, what source of information did you rely upon in labeling or identifying the varieties of that fruit?

A. In most cases we could recognize the varieties ourselves.

Q. Would that be true of the principal varieties?

A. Yes.

Q. Would it be true of some of the lesser well known varieties in Florida?

A. There are some varieties that we at the Experiment Station may not be able to identify by mere inspection.

Q. Doctor, for example, would you yourself or people at your station be able to identify a Booth 1 variety from a Booth 3 variety?

A. Yes.

Q. Doctor, I wish to show you a copy of an avocado

[fol. 122] shipping schedule, of which I am somewhat ignorant. Perhaps you could list some varieties here which are not too well known and which perhaps yourself and members of the Experiment Station could not readily identify?

A. I do not see any point in doing that. I prefer to tell you the ones that I could identify.

Q. Doctor, as a favor to me, will you please describe the varieties which you and your staff would have difficulty in distinguishing from one another?

A. I can pick a few out here; for instance, the Nadir, the Nirody, the Vaca, Avon, Blair, Booth 10s, Booth 11s, Ajax, Sherman, Dunedin, Byars #1—I think we would have some difficulty with those varieties as to identification.

Q. Isn't it true also that perhaps some of the experienced men in the industry, should we say, who deal with these varieties every day, Dr. Harkness, would have no difficulty in distinguishing these varieties?

A. Possibly; I don't know.

Q. As to the varieties you have just named, Dr. Harkness, upon what source of information did you rely in making the entries in your books 7 and 8?

A. That probably never came up, because these varieties were never brought in to my knowledge.

Q. Is it true that subsequent to January or February of 1955 that you would not have personally made the tests [fol. 123] which are reflected in books 7 and 8 and in the mimeograph sheets?

A. That is correct.

Q. Would you have been personally present in the laboratory room when the person on your staff made the tests in all cases?

A. Not in all cases, but in some cases I would have been present.

Q. During the period of time from January of 1955 until December 10th, which is the latest date shown on plaintiffs' exhibit 12 for identification, what would be the total number of workers in your laboratory who would have made these tests acting under your supervision?

A. Two.

Q. Who would those persons have been?

A. Mrs. McKee and Mrs. Kelp.

Q. As to the tests made by either of these two ladies, which were not made in your presence, how would you know as to whether or not their technique was perfect or whether they made errors?

A. I know that they were trained to run the tests, and I know that they knew the technique. I don't know that they applied the technique or not, because I wasn't there at all times.

Q. You presumed that they followed the correct technique?

A. Yes.

Q. However in those occasions where you didn't observe them, you couldn't personally warrant that they did follow [fol. 124] the proper technique?

A. No.

Q. Is it possible that you personally observed them make five percent of the tests covered by plaintiffs' exhibits 12 and 13 for identification?

A. Yes, I would say that I did.

Q. What would be the maximum percentage of the tests that you personally observed?

A. I would hesitate to estimate that.

Q. Perhaps ten percent?

A. I don't know; possibly that is correct.

Q. But certainly less than twenty-five percent; is that correct?

A. I am not sure.

Q. As a matter of fact, you would have no purpose in standing over their shoulders to see them conduct the tests, would you?

A. I know that they are capable workers, so that wouldn't be necessary.

Q. Doctor, I show you an unidentified series of papers marked at the top "1955 Progress Report", and ask you if you can state for the record who typed these pages?

A. You say "unidentified". The first page seems to be page number two. Page one for some reason is missing. The heading is "Annual Progress Report for the Year 1955." Apparently the stenographer didn't put her initials [fol. 125] on this progress report, so, I don't know.

Q. Then you have no personal knowledge as to who typed that report?

A. No.

Q. Is it true, Dr. Harkness, that this report would have been typed from some kind of rough notes made in the laboratory?

A. They were not too rough; they were copied out very carefully.

Q. Do you have any personal knowledge as to whether this typewritten report is a true and correct reproduction of the original handwritten notes?

A. Yes, because I proof read these.

Q. Doctor, I show you page 126 of your book designated number 7, and ask you about item number twelve thereon. Does item number twelve reflect the palatability or taste of the fruit covered by that entry?

A. Apparently it does.

Q. You say apparently. Is that your handwriting there?

A. Yes.

Q. Then at this moment you don't recall the exact circumstances underlying that entry; is that correct?

A. I know that at that time I was running some tests to see how the fruit ripened when picked. My notes are not too full here, but it is evident that the fruit was picked [fol. 126] on September 29th, and the oil content test was run on—oh, I remember now. I picked a lot of fruit on September 29th and ran several oil content determinations on that same day, and then I ran a couple more oil content tests later, a couple on October 10th, on the same fruit; some tests were run on October 7th and some on October 10th. In the period from October 7th to October 10th the fruit became ripe and was tasted at that time.

Q. Who did the tasting?

A. I did myself. I don't remember whether anybody else did or not.

Q. What criteria did you use for palatability?

A. Just my own "feeling".

Q. Do you have any personal attitude or feeling towards avocados which indicates to you when you like avocados and when you don't like avocados?



A. Yes, I do. As I stated before, any investigation of that kind should require a panel test.

Q. Is it true that other persons in other parts of the United States might have different tastes for avocados?

A. Yes.

Q. Directing your attention back to item twelve on page 126 of your book designated book number 7, did you make an oil test on the precise sample which you tasted?

A. No.

Q. Then is it true that you made oil tests on fruit picked [fol. 127] at the same time as the fruit that you tasted?

A. Yes.

Q. Directing your attention to your results of the 1954-55 research project, did these tests show that for any given individual variety of fruit which you tested that the oil content increased as the season progressed?

A. Yes, that was the general result, the general indication that we found.

Q. To the best of your knowledge, Dr. Harkness, at what point of the season in terms of months would the Lula variety, considering a ten-fruit sample, average an eight percent oil content? In your opinion if the fruit had been picked in December and ten samples taken from it of the Booth 8 variety,—would those samples have averaged in excess of eight percent oil content?

A. Many of them would, but not all.

Q. The Booth 8 variety, as in the case of all varieties, has an oil variation?

A. Yes.

Q. And is it true, Dr. Harkness, that variations from the same orchard might run as low as three percent?

A. Yes.

Q. Would you say that it would run higher than three percent?

A. I don't know. In special cases it might, but not usually.

[fol. 128] Q. Would you say that it is a satisfactory fruit if the variation is within a range of three percent?

A. In a given grove, yes.

Q. Were any tests made of the same size fruit in any

variety, whether Lula, Booth 8s or other varieties taken from different groves?

A. Yes.

Q. What was the variation of oil content as between samples of the same size picked under these circumstances?

A. This data here shows a variation up to thirty-six percent.

Q. What was the variation in the majority of the cases, Dr. Harkness?

A. I don't know. I couldn't say what the average would be.

Q. Would the average be somewhere between zero and six percent?

A. Since I have not seen them more than six percent oil content, that is probably correct.

Q. Using a variation of six percent, is it true that that would mean a three percent variation below or above a certain mean line?

A. Yes.

Q. For instance, if the range of variation was six percent, and that median line was eight percent, then it would be three percent above and below eight percent?

[fol. 129] A. Yes.

Mr. Fourn: Mr. Ferguson, I have a considerable body of cross examination yet, so I would suggest that we adjourn for lunch.

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AFTERNOON SESSION

January 22, 1958, 1:00 P.M.

Appearances: Same as heretofore noted.

Thereupon: DR. ROY W. HARKNESS resumed the stand and was examined and testified further as follows:

Cross examination (resumed).

By Mr. Fourn:

Q. Dr. Harkness, in your testimony this morning you used the word "maturity" and the word "palatability".

In your testimony this morning did you mean that when the avocado was mature, that it is also at a stage where it will be palatable to the consumer?

A. Not until it has been given an opportunity to ripen.

Q. When you used the word "matured", meaning the time when the fruit should be picked, did you mean after a normal seasoning period that the fruit had reached a degree of palatability satisfactory to the consumer?

A. That is right.

Q. In your testimony this morning when you referred to palatability, were you primarily relying on your own [fol. 130] sense of palatability?

A. I don't understand that question.

Mr. Ferguson: Neither do I.

By Mr. Fourn:

Q. Well, Dr. Harkness, when you referred this morning to "matured" fruit, you qualified it by saying fruit that is acceptable to taste. Were you referring to fruit that you found had a good flavor?

A. Not at that time. I was referring to fruits that were satisfactory to consumers eating them throughout the country.

Q. Referring to your 1954-55 research project, were the palatability tests that were made at that time made by yourself?

A. I am not entirely sure of this, but I believe I am right in saying that during that period Dr. Harding was running palatability tests in Orlando, so we did nothing at Homestead except perhaps myself, and possibly a couple others, may have taken some incidental supplementary tests, but on the overall we depended on Dr. Harding's tests as to palatability.

Q. Insofar as books designated 7 and 8, where palatability tests are entered, were they limited to tests that you yourself made?

A. Either myself or my associates. I don't remember for sure just how many others I had working with me.

Q. On the occasion when your associates made the

palatability tests, did you yourself join them in the tests?

A. Yes.

[fol. 131] Q. I refer you to seven typewritten sheets which are headed "1955 Progress Report", and ask you if these typewritten sheets refer to your 1954-55 research project?

A. They apply to it. The data was obtained previous to that, as you can tell from the dates indicated there. This is a tabulation of old data that was in the books but which had not been previously tabulated in typewritten form.

Q. Then these seven pages do not constitute findings on the research project; is that correct?

A. They are findings on the research project, but they were not obtained in 1954.

Q. Do you recall at approximately what time this compilation was made?

A. Some time, I believe, before July 1st, and certainly before August 1st. I know that the progress reports are due in either July or August of each year, so it was before that date in 1955. I believe it was probably three or four months prior to that.

Q. As of the date of this report, Dr. Harkness, this was a summary of the work of the previous year; is that correct?

A. It went back more than the previous year. It went back to 1952.

Q. It was a summary of your work from 1952 to 1955?

A. Not all of it. It was data that had not previously been reported.

[fol. 132] Q. Does the data recorded in books 7 and 8 that you discussed this morning, Dr. Harkness, cover the research project made in 1954-55?

A. Yes, it covers the research project from the first date in book 7.

Q. In addition to that it expressly covers reports of oil tests made at the request of members of the industry independently of your research project?

A. Yes.

Q. Directing your attention to your research project in 1954-55, is it true that you personally picked the samples from groves 5 and 9 for that research project?

A. Yes.

Q. And those were the only two groves from which you selected the samples?

A. No.

Q. What were the other groves?

A. The Kendall grove, the FLAG grove and the Brooks grove. I believe those were the only groves that we selected samples from regularly.

Q. So to the best of your knowledge now there would be six groves from which samples were furnished for your 1954-55 research project?

A. I think they are all I know of now.

Q. From your grove 5 and grove 9, and Mr. Kendall's [fol. 133] grove, FLAG grove, and the Brooks grove, making five?

A. Yes.

Q. Do those five groves complete the list?

A. As near as I can remember now. There may have been some incidental ones, but those five were the main ones.

Q. What is the size of grove 9?

A. Five acres, I believe.

Q. How many trees, approximately, on these five acres?

A. Between three hundred to three hundred fifty, I think.

Q. What is the size of grove 5?

A. Grove 5 requires an explanation. Grove 5 is an experimental grove at the Experiment Station. It is composed of ten acres, and it is composed of miscellaneous varieties. There are about seventy-five Lula trees, about seventy-five Booth 7 trees and about the same number of Booth 8 trees.

Q. Seventy-five Lulas, seventy-five Booth 7s and seventy-five Booth 8s?

A. That is correct. I notice that there is also some Booth 8s that came from another "block". Booth 8s came from block 8. The Booth 7s and the Lulas came from blocks 5 and 9.

Q. What was the principal varieties of avocados grown in block 9?

A. Lulas and Booth 7s.

Q. What is the size of Mr. Kendall's grove?

A. I am not entirely clear on that, but I think it is [fol. 134] probably thirty to forty acres. That is the one just east of the highway there at Princeton.

Mr. Kendall: It is twenty acres of avocados.

By Mr. Fourn:

Q. What would be your estimate as to the number of trees per acre in that tract?

A. I imagine about ninety to one hundred an acre.

Q. And what would be the varieties grown in that grove?

A. He has most everything there. Waldins, Lulas, Booth 8s and Booth 7s. Those were the ones I sampled mainly.

Q. And what is the size of the grove owned by FLAG?

A. That is a ten-acre grove, I believe. I believe it is a ten-acre grove.

Q. And can you estimate the number of trees per acre in the FLAG grove?

A. I would guess about eighty.

Q. And the varieties grown in that grove?

A. That is what we call an experimental grove, so they had a lot of varieties there. They had Lulas, Booth 8s, Hicksons, Halls, and possibly some others that I don't remember.

Q. What is the acreage of the grove owned by Mr. Brooks?

A. Probably about twenty acres.

Q. And the approximate number of trees per acre?

A. Probably close to one hundred.

Q. And the varieties grown there?

A. A lot of different varieties there, too; Lulas, Booth 8s, [fol. 135] Taylors and Waldins. There are other varieties grown there also, but I don't recall them now.

Q. To summarize, Dr. Harkness, is it true that grove 5 or block 5 at the Experiment Station is considered an experimental grove?

A. Yes.

Q. How about block 8 grove?

A. Block 8 is an experimental grove also.

Q. And the Kendall twenty-acre grove—is that experimental?



A. No, that is a commercial grove, and the FLAG is a commercial grove also, but I understand that it was planted for experimental purposes.

Q. What is the distinction between commercial and experimental groves?

A. There is no definite distinction except at the Experimental Station of course we have the trees there for various kinds of experiments, whereas in the other groves presumably the trees are there to make a profit on.

Q. For instance, the FLAG grove, with the several varieties you named,—is that typical of a ten-acre commercial grove in this area?

A. It has more varieties than the typical grove.

Q. Is it also true of the twenty-acre Brooks grove that you have more varieties than typical of this area?

[fol. 136] A. The Brooks grove is an old grove and it is quite typical of old groves to have a large number of varieties.

Q. Then it would not be typical of new groves in this area?

A. New groves usually do not have quite so many varieties, although it is not unusual for a new grove to have as many as five or six varieties.

Q. Is it true that a majority of the new groves will contain one or two varieties of avocados?

A. I don't know for sure, but I know there are many that contain more than that.

Q. Would it be for pollination purposes when they contain more than one variety?

A. Probably.

Q. Is grove 5 at the Experimental Station typical of a ten-acre grove in this area?

A. No.

Q. So far as your sampling is concerned, did you sample all of these groves on the same basis?

A. Yes.

Q. What was that date and how did you select your samples from those groves?

A. We picked out certain trees and designated them for sampling purposes, and then we sampled them at various times throughout the season. In the commercial groves we

put tags on the trees so that the regular pickers would [fol. 137] leave the fruit on and we would come in and pick the fruit from those trees.

Q. I take it that these trees were selected deliberately by you in the grove?

A. Yes, they were typical trees, however.

Q. Were they selected at random or did you go into the groves and pick out the trees?

A. They were selected at random but of course we had to select a certain tree in order to—the purpose of tagging them was so that the picking crews would not pick the fruit off of them before we got through picking our samples during the season.

Q. How many trees did you select for sampling purposes on the Brooks twenty-acre tract?

A. I don't remember the exact number, but in general it was about three or four trees of each variety.

Q. And you refer to each variety as the Lula, the Booth 8, the Taylor and the Waldin?

A. Yes.

Q. And I think you included the Booth 7s, didn't you?

A. I got the Booth 7s from another Brooks grove. There are none in that particular grove. Brooks had Booth 7s in another grove.

Q. In selecting the trees from which the samples should be taken in the Brooks tract did you select the trees through a mathematical formula or did you go into the groves and point out the trees?

[fol. 138] A. We went into the grove and pointed them out.

Q. In the Brooks grove, Dr. Harkness, of the four trees you selected, what would be the approximate number of fruit on the individual tree?

A. Oh, I don't know as I counted it, but I would say maybe two hundred to four hundred.

Q. It would be within a range of two hundred to four hundred? A. That is right. There may be some variation within that range, or some variation outside of that range.

Q. When you visited the orchard, would you take a sample from each of the four trees?

A. Yes.

Q. How many samples would you take off of each of the four trees?

A. It was never less than twenty, and sometimes it was more. I mean to say that the total sample was never less than twenty and sometimes it would be twice that many.

Q. In other words, the samples would vary from twenty to forty?

A. Yes.

Q. Was this figure of twenty to forty selected from the same four trees?

A. No, it wasn't the same number specifically.

Q. As to the individual tree, Dr. Harkness, in what portion of the tree did you select the fruit?

A. In all portions.

Q. Does that mean that you selected fruit from all portions of a tree?

A. We had a standard picker for picking fruit from the upper part of the tree, and of course we also picked the fruit from the ground.

Q. Is this standard picker a device which cuts the avocados off the tree?

A. Yes.

Q. It is a long pole with a cutter at the top?

A. Yes.

Q. And did you diagram the tree into quarters?

A. No.

Q. Then is it true that the standard in the picking of the samples would depend on the fact that you used the same general plan in selecting the fruit from a tree with respect to all of the groves?

A. We picked the fruit from different parts of the trees, but in no case were we able to find a particular variation of oil content by selecting fruit from different parts of a tree.

Q. Did you find different oil contents in the fruit picked at the same time from different portions of the tree?

A. As I stated previously, we found different oil content from different fruit on a tree, but those different oil contents were not correlated in any way so that we could tell the position the fruit was picked from the tree.

Q. What would be the range of oil contents of fruit picked from one tree at one time of the same variety?

A. Usually within three percent.

Q. When fruit was picked from these trees in 1954-55, were different size fruit selected?

A. Sometimes.

Q. Did you have a uniform pattern of selecting different sizes of fruit or did you select just one size?

A. That would depend on what we were trying to show at the particular time. From these typewritten sheets, this typewritten data here, if you will look at them, you will notice that I was taking a uniform size on this page labeled "2". You will notice on this tabulation that ten fruit weighed 9.4 to 11.8 pounds—mostly between ten and eleven point five pounds. At other times we would go to a certain tree and take a sample of each fruit, and then a sample of small fruit, and then make a comparison. At one time we adopted the procedure of taking two samples of twenty fruit each at random, and then lining them up in two samples of ten fruit each, and determining the composite of the ten small fruit; in other words, making two determinations of two composites, ten fruit each.

Q. In your tests where you compared the oil content of the small fruit versus the oil content of the large fruit [fol. 141] picked at the same time, was the range in oil content in excess of three percent?

A. No.

Q. Was it within the range of three percent?

A. Yes.

Q. Was the range of oil content of fruit picked at the same time from the same tree and the same size within the range of three percent?

A. Yes.

Q. So that you could find no drastic major difference as between the different size fruit when picked at the same time?

A. There was a specific difference depending on size.

Q. What was that difference?

A. I have that on another sheet of paper here. I will have to look that up. Here is perhaps the best example of it. It is on page six of this typewritten sheet, which you

already have. In this column here you will find the Booth 8 size, and I have listed the size of the large fruit and the size of the small fruit, and the third column there is the difference in size between the large and the small. Then I have listed here the oil content for the large and the small, and as I summed it up I got an average difference of .46 percent oil, or a difference of 12 grams in size, the larger fruit being the higher.

Q. With respect to your 1954-55 studies, Dr. Harkness, during approximately what month of that year would the [fol. 142] Booth 8 variety have exceeded eight percent in oil content?

A. There are a few values here in excess of eight percent. In 1953, I think on December 1, I made one determination of the Booth 8 variety with 8.3 percent oil content, and another one with 9.3 percent oil content.

Q. Would it be reasonable to expect that the oil content of the Booth 8 variety would be increased one month later?

A. It would be reasonable to expect that, yes.

Q. In your 1954-55 project, during approximately what month of 1954 would the Booth 7 variety have reached an eight percent oil content?

A. I don't believe I determined when it would reach an eight percent value. No; I will take that back. I do have some values here of eight percent.

Q. What month?

A. The date is November 20th.

Q. And the oil content, Doctor?

A. It is on page seven here of this sheet. I have some values here from block 9 dated November 20th, averaging 9.2 percent.

Q. During the same research project, Dr. Harkness, during what month would the Taylor variety have reached an oil content of eight percent?

A. Approximately the same time, I would imagine.

Q. Approximately November?

[fol. 143] A. Yes, approximately November.

Q. In this research project did you find that there was an increase in oil content between the time that the same fruit was picked and the time that the fruit had softened, or whatever you call it.

A. We have some data to indicate that the oil content does increase after picking.

Q. Approximately what is the range of that increase?

A. Approximately one percent, except that we ordinarily did not determine the oil content after it was completely softened.

Q. At what point subsequent to the oil test and the time of picking, would you have made the test?

A. Probably as much as five or six days afterwards.

Q. Is it true that the period of five or six days after picking that the oil content of the avocado would increase approximately one percent?

A. On the average, but that is not completely consistent, because in some cases we got a lower value at that time, but on the average it increased.

Q. Is the cause of that increase limited to the amount of dehydration which occurred during those five or six days?

A. The increase was more than the change in percentage due to the loss of that amount of water.

Q. What factors, in addition to the factor of dehydration, would have caused the increase?

[fol. 144] A. I don't know. I am not a plant physiologist.

Q. The person who would work on that would be a plant physiologist?

A. A plant physiologist, a bio-chemist or something of that sort.

Q. Would it be reasonable to expect that both the Booth 7 and the Taylor varieties, which had an oil content in November of eight percent or more, would have had an increase in oil content even more if picked one month later than November?

A. Yes.

Q. Is it also true that the size would increase somewhat if left on the tree from November to December?

A. Yes.

Q. Have you discovered any consistency between the increase in weight and increase in oil content of avocados in this area?

A. The size increase and oil content increase do not increase at the same time, so you can't compare the two and say that they follow together.



Q. Is it true that palatability, oil content and weight will increase as the fruit remains on the tree during the growing season?

A. Yes.

Q. Have you been able to obtain any correlation as to whether these three things, palatability, oil content and weight have any relation to each other?

[fol. 145] A. That is what we have not been able to do satisfactorily.

Q. Dr. Harkness, will different cultural practices affect the same variety of fruit as between different orchards?

A. I don't know.

Q. With respect to size of fruit will cultural practices affect the fruit?

A. Yes.

Q. Are there other factors, of which you are aware, that will affect the size of the fruit?

A. Cultural practices and the weather.

Q. Is it true, Doctor, that cultural practices tend to cause the fruit to increase in size as compared to another orchard which has less satisfactory cultural practices, and that the fruit of the larger size will tend to have a lower oil content than fruit in other orchards of the same kind?

A. We have no correlation of that kind.

Q. Doctor, is it your opinion that the oil tests would be a reliable index of maturity and palatability for a single variety, such as the Lula variety?

A. It is my opinion, sir, that on account of the large variations that one finds in oil content, that we have not been able to correlate with palatability,—that on that account it would be a very unreliable test.

Q. Are you aware of any oil test comparisons with palatability which have been made in the scientific field?

[fol. 146] A. The only ones I am aware of are those that Dr. Harding made.

Q. Doctor, in your oil tests which appear to have been made from 1953 to date, what type of oil tests did you utilize?

A. It was essentially the method used in California. We modified the method slightly so as to avoid using the shaker machine which they use.

Q. Doctor, in making these tests will you describe for me the various steps that you utilize from the time the fruit enters your laboratory until you finally make your final rating?

A. The method is described in a paper which I wrote for the Florida State Horticultural Society. I don't know whether you have that here or not, but is described fully in that paper. Do you want me to give it to you in my own words now?

Q. I am afraid so, Doctor.

A. We weigh out a five-gram sample of the fruit. We obtain that sample by means of a core bar. We take a core of fruit from the skin to the side. We take enough of these cores to make more than five grams, and then we cut it so as to have an exact five-gram sample. We put that in a jar, a Waring blender, and add five millimeters of halowax oil and two hundred millimeters of water. We mix that up into a mixture, and we take that mixture and put it in a fifty-millimeter centrifuge tube, and as we centrifuge that material the oil settles to the bottom. We pour the water layer off the top, and the oil remains at the [fol. 147] bottom underneath the skim of the avocados. Then we take a stirring rod and poke a hole in the skim and pour the oil out from underneath it onto a wet glass, and from there we take that oil and run the refractometer index on it, and from that point on the procedure is exactly the same as utilized in California, except that we found it necessary to add  $2/10$ ths of 1% of oil in order to agree with the results obtained with the shaker.

Q. Dr. Harkness, what in your opinion necessitates or causes the difference between the shaker and the other stuff you mentioned?

A. It could be the solution of the avocado oil in the water.

Q. Is the error the same as between soft and hard fruit?

A. We do not use that method for very soft fruit.

Q. Is that error greater when you use it on soft fruit?

A. I don't know, because it is impossible to make a determination by that method with very soft fruit. We still have the shaker machine to use in cases where we want to make a determination on the soft fruit.

Q. Would you describe this Waring blender?

A. It is an ordinary household mixer, along with a quart jar on a little motor placed on stand.

Q. Is the Waring blender a standard brand?

A. Yes.

Q. You mentioned something about heating the mixture.  
[fol. 148] A. No, I did not.

Q. During any portion of this particular process is any of the mixture heated?

A. No.

Q. From the description you have just given me, Dr. Harkness, could another chemist, following this exact description, duplicate your results?

A. Yes.

Q. Would you describe your refractometer index?

A. It is a standard refractometer index. I believe it is called an Abbe.

Q. Is there any provision control temperature on that instrument?

A. Yes.

Q. What is that control?

A. It is a thermostatic control that controls the temperature approximately plus or minus 2/10ths of a degree Fahrenheit.

Q. What is the amount of the temperature setting when you use this refractometer index?

A. I believe it is thirty degrees.

Q. Would that be thirty degrees centigrade, Doctor?

A. Yes. It is somewhat higher than the temperature that is sometimes considered standard, the reason for that being that we wanted the temperature to be above the room temperature, so our calibration was made for that temperature in order that it would be consistent.

[fol. 149] Q. Doctor, directing your attention to this Abbe refractometer index, does that instrument you have in your laboratory have a standard index on it which was established for that machine by the factory?

A. Yes, I believe so.

Q. And what is that standard?

A. I don't know. I just haven't worked with it for the last several months.

Q. Based on your memory, Dr. Harkness, would that standard temperature be lower than thirty degrees?

A. Yes, I believe it would be twenty-five degrees.

Mr. Fourn: That is all.

By Mr. Norris:

Q. Dr. Harkness, I would like to ask a couple of questions on a couple of points which are not clear in my mind. When you bring the fruit in from the field do you run the oil test on all of the avocado samples?

A. Yes.

Q. And do you run palatability tests on the same fruit that you run the oil tests on?

A. As I said before, we ran many palatability tests, and very few of those that we did run it was on different fruit. We tried doing some on the same fruit—

Q. Generally speaking, it was your practice to run oil tests on different avocados than you ran the palatability tests on?

[fol. 150] A. Yes.

Q. Do I understand, Dr. Harkness, that your oil content tests were all run within two days after the picking date of the fruit?

A. We were trying to determine the oil content of the fruit as picked. That was true, but in a special investigations on the matter of ripening, we waited longer periods.

Q. Are those special tests so designated in your records?

A. Yes.

Q. How are they designated?

A. There is a footnote on page three of this typewritten sheet here, which I believe explains it all right. For example, I have duplicate determinations made for certain values, and the first value in all cases is the one that runs in one or two days of picking, and the later ones would run at a later time.

Q. Was it your testimony that the size of the avocado could be affected by the cultural practices in a particular grove?

A. Yes.

Q. Could the rate of maturity be so affected by cultural practices?

A. I don't know.

Q. Would it be possible for cultural practices to stimulate the growth of the avocado or in the development of the maturity of the avocado?

A. I don't know.

[fol. 151] Q. But you do have an opinion that normal cultural practices can affect size?

A. There is no doubt about that.

Q. Would you explain your basis for that opinion?

A. It is involved, but certainly if you apply more fertilizer and water you will get a greater growth of fruit. It is not entirely certain that you will get more fruit or larger fruit, but it does either directly or indirectly affect the size of the fruit somewhat.

Q. You also testified that there might be other factors which might influence the growth of avocados, such as weather; is that correct?

A. Weather is one thing, and of course cultural practices include most everything except weather, perhaps.

Q. Does the difference in weather from degree to degree materially affect the rate of growth of the avocados in this district?

A. Very largely.

Q. Is it possible that the rate of growth of the avocados is so easily affected by the various factors that the rate of growth may be different within a given district?

A. I don't know. I would expect that a weather difference in a given district would be an important factor in that respect.

Q. Do you hold a firm opinion on that, Dr. Harkness, or is that just speculative on your part?

[fol. 152] A. The question about weather conditions?

Q. Yes.

A. I would expect that the weather conditions in a given district would be pretty much the same. Of course a freeze would make a big difference. Aside from something like a freeze or a flood or something like that, the temperature variations probably would not make much difference in a given district.

Mr. Norris: I think that is all.

**Redirect examination.**

**By Mr. Ferguson:**

**Q.** Dr. Harkness, you stated on cross examination that the tests made at the Experiment Station in 1955, 1956 and 1957, upon application by growers and handlers, were not a part of research project number 675. Now, then, do these tests have any purpose so far as you and the University are concerned other than to render a public service?

**A.** Only insofar as they were supplementary to and in confirmation of our previously obtained research work.

**Q.** You have also stated that the tests considered as a part of research project 675 were concluded at the end of the year 1954. Now, I ask you were the conclusions stated by you at this hearing confirmed by tests made as a part of project 675?

**A.** Yes.

**Q.** You were also asked something about your tasting of avocados. For what purpose did you taste any of the avocados?

**A.** The purpose was to determine if they had reached a [fol. 153] satisfactory degree of maturity for that variety.

**Q.** Did you taste them to determine if you personally like the flavor of one variety rather than another?

**A.** No.

**Q.** Or to determine the state of ripening process?

**A.** No. They were allowed to ripen until they reached the condition that we thought was the best for that particular fruit.

**Q.** Then was it to ascertain whether it had attained the flavor appropriate to that variety?

**Mr. Fourt:** I object to the leading and suggestive question.

**Mr. Ferguson:** I think the witness has already answered that question. Maybe you are right in your objection.

**By Mr. Ferguson:**

**Q.** Did you compare the flavor of one variety with the flavor of another variety?



A. No. We tried to avoid that.

Q. There was a question put to you about a sample of ten Booth 8s tested in December of one of the years you were making these tests, and you were asked if the avocados would likely reach an eight percent oil content or more in the month of December. Did you in your answer give any consideration to marketability of the fruit when it attained an eight percent oil content?

A. No, I gave no consideration to that. As a matter of fact, sir, that fruit was already so matured that it probably would have been difficult to get it to a northern market in [fol. 154] time before it became overripe.

Q. Another question was asked you along the same line, that is, you were asked if the fruit were left on the tree another month or two within a growing season, would it increase the oil content of the fruit. You answered that question in the affirmative. Now, then, Dr. Harkness, if left on the tree after the growing season what is likely to happen to the fruit?

A. Well, it would probably fall to the ground.

Q. Does dehydration increase as time goes on?

A. Yes.

Q. And would it be greater at the end of two months than at the end of one month?

A. Yes, in some varieties it would be greater, yes.

Q. I direct your attention to a copy of the list of avocado varieties enumerated on plaintiffs' exhibit 9 for identification in this case. Look at that list and tell us of what general horticulture classification are the first eleven varieties included on that list?

A. The first eleven on this list are all West Indian varieties.

Q. And what are the principal characteristics of the West Indian avocados?

A. They have a thin skin and are smooth.

Q. What about size?

A. They have a tendency to be of large size.

[fol. 155] Q. And as to oil content?

Mr. Fourn: I object to the leading and suggestive question.

Mr. Ferguson: I am just trying to direct the attention of the witness to it.

The Witness: They do have a lower oil content.

By Mr. Ferguson:

Q. What is the comparative size of the Booth 8s as against the first eleven varieties named on that list?

A. It is smaller than most of them; in fact, I think it is probably smaller than all of them.

Q. Of what classification are most of the varieties on this list after the first eleven?

A. With the exception of possibly a half a dozen or so, most of them are probably hybrids.

Q. What varieties on this list are grown in the largest volume in Florida?

A. The Lula, Booth 8, Booth 7, Waldin, Booth 1, Hickson, Pollock, Hall, Choquette and Taylor. I am not sure that these are all in proper order, but those would include the major commercial varieties.

Mr. Ferguson: That is all.

Recross examination,

By Mr. Fourt:

Q. Dr. Harkness, in the course of your professional career have you had occasion to make a study of the marketing of avocados?

[fol. 156] A. No.

Q. Do you consider yourself as an expert in the field of marketing of Florida avocados?

A. No.

Mr. Fourt: No further questions.

And Further Deponent Saith Not.

Dr. Roy W. Harkness, Deponent.

[fol. 158] Thereupon: HAROLD E. KENDALL a witness, called on behalf of the Plaintiffs, being first duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Ferguson:

Q. Will you state your name in full?

A. Harold E. Kendall.

Q. Where do you reside?

A. At Goulds, Florida.

Q. What is your business?

A. I am a grower and shipper of avocados.

Q. Where is your office located?

A. Located in Goulds, Florida.

Q. Do you have a packing plant there?

A. We have a packing plant located on the highway between Goulds and Princeton.

Q. Now, you say that—

A. I am referring to the South Florida Growers Association, of which I am president.

Q. Is that a corporation?

A. It is a corporation.

[fol. 159] Q. Of what state?

A. Florida.

Q. When was it organized?

A. I'd have to—

Mr. Fourn: Pardon me. Mr. Ferguson, before he answers that question, we should like to be supplied a copy of the document which he is using to refresh his memory.

Mr. Ferguson: I don't know if he is going to use any documents.

A. (Continuing) South Florida Growers Association was incorporated in April, 1953, April 29, 1953.

By Mr. Ferguson:

Q. Did it succeed some other business organization?

A. Yes, previously I operated under the trade style of Florida Growers Association from July, 1939, until April 30, 1953.

Q. Was that a corporation?

A. No.

Q. An individual business?

A. An individual business, Florida Growers Association.

Q. And of what does the business consist, that is, what are the operations of the business?

A. South Florida Growers Association consists of a packing house and surrounding property that has facilities for receiving, grading, and packing and cooling and shipping of avocados.

Q. Do you also handle other fruit?

[fol. 160] A. Yes, we handle limes and mangos.

Q. Does your company also engage in the cultivation of avocados?

A. South Florida Growers do that, engage in the cultivation. Independently I own some groves myself.

Q. What groves do you own and to what extent and where are they located?

A. All of the groves I own are in the area of Dade County, known as Redlands area, which is 20 miles south of Miami and these groves amount to 100—115 acres of producing avocados and about 30 or 40 of producing limes.

Q. Do you operate groves for others?

A. Yes, in connection with other activities in the area, we operate a number of other groves on a lease arrangement basis custom management and maintenance work for a number of other growers in the area, in the immediate area.

Q. What does that mean?

A. That means we do the management and maintenance of the groves. We do the maintenance work on them, the maintenance work in this case would be the operations, such as fertilizing, spraying, mowing and harvesting.

Q. How long have you engaged in the growing and handling of avocados in Florida?

Mr. Norris: I was wondering if Mr. Kendall was an individual or an official of the corporation.

[fol. 161] Mr. Ferguson: At this time I asked the witness about his own experience.

Mr. Norris: Some of the questions aren't clear to me with reference to his individual capacity.

Mr. Ferguson: You can't make it clear now. You can do it later on cross-examination.

By Mr. Ferguson:

Q. Have you the present question?

A. As an individual I am interested in the growing and marketing of avocados and have been since July, 1939.

Q. Did you have any prior experience in the avocado industry?

A. Prior to that time I was with Calavo Growers of California for approximately 10 years, from December, 1929, until I came down here in July, 1939.

Q. In what capacity or employment?

A. Well, all the way from cooler clerk up to district manager, mostly in the sales department of Calavo Growers of California.

Q. Does Calavo have sales offices in places other than California?

A. Yes, I believe they have some 35 or 38 sales offices outside of California.

Q. Where did you work?

A. Well, I started out in Los Angeles, went to San Francisco, then to New York, then at the time, I paraphrase these remarks by saying at the time, I was with Calavo they were opening up sales offices around the country and [fol. 162] I was in the process of starting sales offices and I went to New York and Boston, Cleveland, Chicago, Philadelphia, Atlanta, in various capacities and in most cases in the opening of offices and turning them over to other personnel after the offices had been started.

Q. What schooling did you have, Mr. Kendall?

A. I went to the University of California, graduated in 1929.

Q. Did you receive a degree at that time?

A. Yes, a bachelor of science degree in agriculture. I went to Harvard Business School and graduated from there—Harvard School of Business in 1935. I had a leave of absence from Calavo in order to enter the Harvard Business School.

Q. Did you receive some degree there?

A. A Master of business administration.

Q. In your activity in the business, have you written articles on the subject, on the producing and marketing of Florida avocados?

A. There have been a few articles written, I think, one or two in California which were of an informative nature and there might have been one in the Florida Horticultural Society along the same vein.

Q. Will you state generally what has been the development of the avocado industry in Florida during these years in which you have been active in this industry?

A. Well, the avocado industry in Florida was a relatively [fol. 163] small industry during the years of 1925 to '38 and at that time the acreage was static. I believe it was around 2,000 acres, possibly a little less. Beginning with '39 or '40 or '41, along in there, acreage was planted and began to be very heavily planted along around about 1944 to 1950 and I believe the total acreage planted in Florida finally rose to around 11,000 acres. I have heard somewhere around approximately 11,000 acres of avocados planted in Florida.

These increased plantings are just now beginning to come in production. It takes eight to ten years for avocado trees to become, to approach maturity or at least any size and when we found that we were getting increasing supplies of avocados of different varieties, a number of factors in the industry decided they should set up a standard for maturity.

One of the ways of setting up a standard of maturity was to make a study and so forth and so that is when they set up the Avocado Administrative Committee and the Avocado Administrative Committee came into being about four or five years ago. One of the main purposes was to study maturity and attempt to set up standards of maturity. At the present time I believe the production of avocados in Florida is approaching around 600,000 bushels as compared to about 100,000 bushels about 10 years ago, depending on the weather and climatic conditions. Maybe we could increase it to from 800,000 to 1,000,000 bushels in the next three or four years.



[fol. 164] Q. In these recent years what varieties of avocado have become most important commercially?

A. In the last 10 years the Hybrid variety of avocado which have been developed over the past 20 or 25 years, have been planted rather extensively.

The Hybrid, which from a growing standpoint, seems to be well suited to Florida and principally the Hybrid especially the West Indian and Guatemalan varieties. These varieties are principally Booth 8, Booth 7 and Lula varieties.

Q. I direct your attention to the copy of the document identified as Plaintiffs' Exhibit 9 and particularly the first 11 varieties appearing on the list of varieties of avocados contained on this document. Now, what classifications are these 11 varieties, if you can state?

A. I believe most of those first 11 varieties would be classified as West Indian, avocados of the West Indian type.

Q. Were some of these 11 varieties grown in Florida in substantial volume? To make that more definite, let's say 10,000 bushels in one or both of the past two seasons?

A. Oh, yes. The Fuchs was one that was grown, the Waldin, Pollock and Simmonds amounted to—

Q. I notice you place the Pollock and Simmonds together.

A. Well, the Simmonds and the Pollock are classified together because the Simmonds is the seedling of the Pollock. Of course, then we have the Waldin which is one of [fol. 165] the major varieties which has been planted in some quantity during the past 10 years so it is quite a large variety. I believe the other ones would be in the classification of what we would call minor varieties.

Q. What about the Trapp?

A. The Trapp is a variety which was extensively planted many, many years ago, but hasn't been planted—I doubt if there has been any planted during the last year, but it is a very heavy producer some years.

Q. Did you ship to California say any of the first 11 varieties named in Plaintiffs' Exhibit 9?

A. I don't know. I believe I haven't shipped any of these first 11 varieties to California—no, I can't say that I have.

Q. Number 12 in the list is Booth 8, is it not?

A. Yes.

Q. Have you shipped Booth 8 to California?

A. No, I haven't been able to get any of the Booth 8 to run a high enough test to warrant taking a chance shipping them to California.

Q. What kind of a test?

A. Before we make any shipments to California—

Q. Just answer the question.

A. Oil content test.

Q. Oil content test?

A. Yes.

Q. You were, of course, familiar from your experience [fol. 166] with the predominant varieties of avocado grown in California?

Mr. Fourn: I will object to the question as being leading and suggestive.

Mr. Ferguson: I don't think it is leading or suggestive.

Mr. Fourn: You go ahead and answer.

A. Do I know of the major ones grown in California, yes.

By Mr. Ferguson:

Q. Well, you are familiar with the varieties?

A. Yes.

Q. Familiar with the varieties that—

Mr. Fourn: I object to the question as being leading and suggestive and ask it be stricken on that ground.

By Mr. Ferguson:

Q. What is the size and appearance of the Booth 8?

A. The Booth 8 is one of our varieties that is characterized as heavy among a large number of fruits of a smaller size. I would say that our Booth 8 runs from, on the average, from 10 to 16 ounces in size; very heavy from 12 to 14 ounces at the height of the shipping season. And this fruit is of an oval shape which is somewhat or much like the Choquette in general size and appearance.

Q. Can you tell us whether or not the production of Booth 8s has been increasing or decreasing in recent years?

A. The production of Booth 8s has been increasing over the past 10 years. I think it will continue to increase because as the groves come into production the Booth 8s are a heavy producer and the newer groves have been planted heavily.

Q. What variety or varieties have you made most of the shipments of avocado to California?

A. Principally the Lula variety.

Q. Looking over the list in Plaintiffs' Exhibit 9, do you recall a shipment of any of the other varieties named in that list?

A. We tried Booth 7 variety and I think we tried some Hickson. I think the Hickson went through without too much difficulty, but the Booth 7, I believe, we had trouble with. They didn't meet the oil content required when they reached California.

Q. You have named the Lula and the Hickson and Booth 7.

A. Yes, those are the—

Q. Have you from time to time procured tests of oil content of avocado from the Subtropical Experiment Station of the University of Florida in Homestead?

A. Yes, we have.

Q. Would you look at the copy of Plaintiffs' Exhibit 13, for identification, and tell us to the best of your recollection if you applied for the tests set forth in that exhibit?

A. Yes, I believe we did.

Q. To the best of your recollection were the results of these tests reported to you personally?

A. Yes.

Q. For what purpose did you procure these oil tests?  
[fol. 168] A. We were trying to find out whether any of our avocados would test 8% oil content with the thought that we then would be able to ship them to the California markets for sale within the State of California.

Q. In any instance, Mr. Kendall, did you procure an oil test for any other purpose?

A. No, I don't think so, no.

Q. If you will look at Plaintiffs' Exhibit 13, for identification, does it indicate that you obtained oil tests in October and November, 1954, on Hickson, Lula, Camp Vaca, Booth 7, Booth 8, Taylor, and Booth 3 avocados?

A. Yes.

Q. Did you ship avocados of any of these varieties to California in 1954-55 season?

A. We shipped the Lula and Booth 7. That was the year we tried the Booth 7 out there, but it was principally Lula.

Q. Do you recall about when, what time of the year?

A. To California?

Q. Yes.

A. I can't—if I can refresh my memory from some notes—

Mr. Fourn: Mr. Ferguson, may I see the notes prior to the witness answering on this occasion?

Mr. Ferguson: He will have to pick them out.

Mr. Fourn: Yes, he can look at the documents but we would like to see them and then he can answer the question.  
[fol. 169] Mr. Ferguson: We will do it that way.

By Mr. Ferguson:

Q. Is that (indicating) the document you are going to look at?

A. Yes, to refresh my memory.

Q. Any other pages you are going to look at?

A. No.

(Defendants' attorney examining paper.)

Mr. Fourn: Mr. Ferguson, we would like to mark this for identification, or do you desire to?

Mr. Ferguson: You are a little out of order. It won't run away.

By Mr. Ferguson:

Q. Is your memory now refreshed, Mr. Kendall?

A. It appears we started shipment to California in 1954 on October 29, 1954.

Q. And when, over what period of time?

A. Through November 19, 1954.

Q. Would it be the end of October?

A. About a three-week period.

Q. Had you been marketing these varieties? I believe you named the Lulas and Booth 7, previous in the season in other states?

A. Oh, yes. We had been marketing them right along under our schedule shipping date.

Q. Had you disposed of part of your supply of these varieties—

[fol. 170] Mr. Fourt: I will object to the question as being leading and suggestive.

A. We had shipped a considerable quantity of these varieties prior to the time we made our first shipment to California.

By Mr. Ferguson:

Q. Now, going to the year 1955, and again looking at Plaintiffs' Exhibit 13 for identification, what varieties, if any, did you procure oil tests on in that season?

A. '55, I think we procured oil tests of the Camp variety.

Q. Let's see it.

(Examining document.)

Q. Here is the page (indicating).

A. That is the Camp variety only and I meant the Booth 3 and Lula varieties. We got them at the Camp Grove.

Q. "Camp" is the name of a grove?

A. "Camp" is the name of a grove.

Q. When did you procure those tests?

A. Those tests were started on November 19 and carried—November 14 and carried over a period of 9 days through November 23.

Q. Did you make a shipment of avocados of these varieties to California in 1955?

A. We made a shipment of Lulas,—a shipment of Lulas in 1955.

Q. When?

A. Beginning November 15.

[fol. 171] Q. At what stage was this in your marketing of Lula avocados in the 1955-56 season?

A. Well, we started moving Lulas of 18 ounce minimum back in October—October 3, and then on October 17 we

were moving, marketing, Lulas of 16 ounce minimum weight, and on October 31 we started marketing Lulas of 14 ounces and on November 14 we were able to market Lulas of 11 ounce minimum.

Q. Can you state to what extent you had marketed Lulas prior to November 15, 1955?

A. I know we had moved quite a few of them. I couldn't say what percentage we had moved prior to that time.

Q. In 1956-57 season, did you procure some oil tests?

A. We started with the oil tests or asking the experimental station on November 9. I think, however, it might be fair to state that many times we didn't ask for the oil tests on our own account, because we would possibly ask Dr. Harkness' office who would be doing the oil tests and ask them how the tests were coming until they got up above the 8% on any variety. We didn't continuously take samples ourselves. We only took them when we thought there was a possibility, a chance, of getting a particular variety or particular grove that would test 8%; then, at that time we would start taking tests. In other words, these tests here would be made, or taken, of a grove if for some reason or another we thought they might possibly test 8%.

Q. Those started, you say, November 7?

[fol. 172] A. November 9, according to this table here (indicating).

Q. Was there a number of these tests made on various dates in November?

A. There were a number of tests made from November 9 through the 28th primarily of Lula.

Q. Any later ones?

A. Yes, the Lula even went clear through December.

Q. That was the Lula and other varieties?

A. The other varieties, Booth 1s, Booth 3, Taylor, Booth 4—clear way in December and still weren't passing, still weren't going 8%, let's say.

Q. Any others?

A. Hickson—did I mention Taylor, Booth 7b, Collinson and Herman. All of those varieties, especially in these earlier years, we tried to find out when, if ever, they would test 8%.



We would take samples many times out to the experimental station to ask them to run it.

Q. Did you make shipments to California in this season of any of these varieties of avocados you have just mentioned?

A. No, we only shipped the Lula variety, because—that is all we shipped, I believe.

Q. Can you tell us when?

A. If I can refer to that (indicating) piece of paper I had here a minute ago. That had the same shipping information which indicated what we shipped to California, [fol. 173] avocados to California, November 15, 1955 and—

Q. Now, we are in '56-57?

A. '56-57, I am sorry. If I can refresh—

Q. Is there something that you can refresh your recollection with there? If so, you may look at it after Mr. Fourn looks at it. I mean, before you answer.

A. Let me look and see if I can find anything to indicate '56-57.

Q. Is that the paper you are going to look at?

A. Yes.

Mr. Ferguson: All right. I will hand it to Mr. Fourn so he may examine it.

(Examining paper.)

By Mr. Ferguson:

Q. Have you in mind the question?

A. Could I have it repeated, if you would, please?

(Thereupon, the preceding question was read.)

A. (Continuing) We started making shipments to California on November 16, 1956, and we shipped that year up through January 17, 1957.

Q. Taking the earliest date, November 16, how long was that after the commencement of your marketing of Lulas in 1956-57 season?

A. Well, 1956-57, we started marketing Lulas of 18 ounces or more on October 8. On October 22 we started [fol. 174] marketing Lulas 16 ounces or more and on No-

vember 5 Lulas of 14 ounces minimum were marketed. On December 3 Lulas of 11 ounces minimum.

Q. What is the size or weight of the Lulas that you usually market?

A. On these shipments that we usually make at that time of the year the fruit will average a package, that we package, 12 to the flat, 14, 16 and 18 and the 12 will run approximately 20 to 22 ounces; 16 will run around 14 to 16 ounces; 18 will run about 13 to 14 ounces.

Q. You ship the 14's?

A. 14 would run about 16 to 18 ounces, yes.

Q. Going to the 1957-58 season, did you obtain oil tests in that season?

A. Yes, our first test on the Lula was obtained October 31, 1957, and they continued on through the middle part of November, primarily on the Lula, mostly Lulas.

Q. Did you also obtain tests on the other varieties?

A. We obtained one test of Booth 7, one test of Booth 3 and we made—we had one test made that (indicating) shows three here, but it was one sample of Booth 8 on November 18. That was one sample which we presented them. It shows here (indicating) as three tests, however.

Q. In that season did you make shipments of avocados to California?

A. Yes, we only shipped the Lula variety.

[fol. 175] Q. Beginning when?

A. Beginning November 7 and we haven't finished the season, of course.

Q. Had you been marketing Lulas in this season prior to November 7?

A. Yes, Lulas were marketed at 18 ounce minimum on October 7; 16 ounce minimum on October 21; 14 ounce minimum on November 4 and 11 ounce minimum on November 18.

Q. Were some of your shipments of avocados to California barred from sale in that state because of alleged insufficient oil content?

Mr. Fourt: I will object to the question as being leading and suggestive.

Mr. Ferguson: I will break up the question.

By Mr. Ferguson:

Q. Were some of your shipments of avocados to California barred from sale in that state?

A. Yes. Over each of the four years we had shipments which were rejected when they were inspected in California.

Q. Have you prepared a summarized statement of these rejected shipments?

A. Yes, I can give you a summary of these statements.

Mr. Ferguson: Will the Reporter please mark these three pages entitled, "Avocado Shipments Barred from Sale in California, South Florida Growers Association, Inc." as Plaintiffs' Exhibit 17 for identification.

[fol. 176] Mr. Ferguson: I will ask you a few more questions on it.

Mr. Fourt: May I read it?

Mr. Ferguson: Okay.

(Examining document.)

By Mr. Ferguson:

Q. Mr. Kendall, have you with you at this hearing the complete file of each of the seven transactions described in Plaintiffs' Exhibit 17, for identification?

A. Yes, I have a folder giving all the information.

Q. Have you the invoices?

A. I have the invoices.

Q. And the bills of lading?

A. Yes, on each one of the individual shipments.

Q. You have the account record of the customer or consignee?

A. Yes.

Q. Do you have the inspection certificate, if any inspections were made by the Inspection Service of the State of Florida?

A. We have the inspection certificate on each one of these.

Q. Did you get more than one copy of the inspection certificate?

A. No, we get what is known as the red copy of the truck inspection certificate which is entitled, "The Red Copy".

Q. You have the copy of the certificate marked here, marked Plaintiffs' Exhibit 3 for identification, is that what you call the yellow?

[fol. 177] A. That is the yellow copy, I don't know who gets that, I guess the truck driver. Each handler gets a copy of that inspection certificate at the time his truck is loaded.

Q. Do you furnish a copy to the truck driver?

A. We don't furnish them; the Inspection Division furnishes them. We are furnished only with our copy.

Q. Do you know whether or not that goes with the truck?

A. It is supposed to go with the truck and be always with the truck's papers all along the line. That is, the yellow copy.

Q. Yes. Are there inspection stations somewhere near the border of the state?

A. Yes, there are inspection stations on the south entrance to California at Yuma, California, somewhere along there.

Q. I am not talking about California. I am talking about Florida.

A. Yes, there is what we call Road Guard Stations at every exit from the State of Florida across the whole peninsula. I would say it is almost impossible for a truck to get by one of the inspection stations without showing a bill of lading and certificate, as the case would be.

Q. By this certificate you mean the certificate of inspection?

A. Yes.

Q. Do you employ a selling agent in California?

A. My principal sales agent is Calavo in California. They [fol. 178] handle all my sales out there.

Q. Do you employ Calavo Growers in California in any other markets?

Mr. Fourt: I object to the question as being leading and suggestive.

A. Calavo Growers of California are my principal sales agents throughout the country. They are not exclusive, but they are my principal agents.

By Mr. Ferguson:

Q. Mr. Kendall, is the document now marked Plaintiffs' Exhibit-17, for identification, a true and correct summary of what appears in the books and records of your company regarding these seven shipments of avocados to California?

A. They are as exhibited, yes.

Mr. Ferguson: This document marked Plaintiffs' Exhibit 17, for identification, will be offered in evidence as Plaintiffs' Exhibit 17.

By Mr. Ferguson:

Q. From your experience in the marketing of avocados, can you tell us whether or not a chain store grocery organization would undertake a program of advertising and selling avocados of specified kind and specified price without certainty of receipt of the avocados in accordance with a predetermined delivery schedule?

Mr. Fourt: I will object to the question on the grounds that there has been no proper foundation laid and that the question is assuming facts which are not in evidence.

[fol. 179] Mr. Ferguson: Well, I do not think it is assuming anything except that he has experience in the marketing of avocados.

What other assumption is there?

Mr. Fourt: Well, we will have to argue this point before the Court.

Mr. Ferguson: Well, you have made an objection and it is up to you to state what it is. You say that we are assuming facts.

Go ahead.

The Witness: May I have the question repeated?

(Thereupon, the preceding question was read.)

A. (Continuing) No, the chain stores are rather unwieldy organizations. At the time in order to set up the promotion of a particular item they usually require 10 days to two weeks to plan their promotional activities. In making purchases of items like avocados, for example, from Florida

to California or to the northern markets, for example, chain stores in Chicago or New York or San Francisco, when they are going to pay for something they want to know they are going to receive it. Because, they have already set in motion and promotional space in the store and advertising and if the situation happens and did happen a number of times in our case, we got a truckload or two or three truckloads of fruit for a chain store and we set a delivery date we intended to put the fruit in the stores, that is within the next day or two, if that truckload [fol. 180] is rejected for one reason or another and it is not available to them, they immediately lose a great deal of interest in that particular item and become quite upset because it disturbs their whole marketing promotion at that particular time.

That has happened in a number of cases and it is particularly disturbing, because of the distances over which we operate and the factor, season, for marketing is relatively short.

Q. I failed to ask you, I am now referring to Plaintiffs' Exhibit 17 for identification, whether or not your file includes a report ~~from your agent~~ or consignee as to the rejections of all or part of the load, as the case may be, and the cause of the rejection?

A. We have what we call an "Arrival Report" which is sent along to the receiving office or consignee and usually that Arrival Report is filled out in great detail as to arrival and a place for remarks, if anything unusual, such as a rejection of a load or part of a load. All of those notations are made and many of the shipments that notations were made on show certain portions were rejected, because of oil content being below 8%.

Q. Is that the basis in each instance of the statement in this exhibit that certain portions of the loads were rejected upon test of oil content?

A. Yes.

Q. Are all of these avocados handled by your company marketed under Federal Marketing Order No. 69 and Fed- [fol. 181] eral Marketing Agreement No. 121?

A. Yes, all of our avocados are under that regulation.



Q. How long has this been true?

A. Ever since the inception of the Avocado Administrative Committee, which was in 1954.

Q. When avocados shipped by you to California are rejected in that state, what happens to them?

A. We have to find some other home for them and usually we have to have them re-shipped to Arizona or Texas, if they are in south California or if they are in northern California, they are sent to Salt Lake City or Portland or Seattle, any place we can dispose of them outside of California.

Q. What effect, if any, does this have upon these other markets as far as your sales are concerned?

A. It naturally upsets these other markets to have a load of fruit dumped into them, either in good or in poor condition, at best, and it amounts to an oversupply at worst. It amounts to a great deal of fruit, a great deal of ripe fruit, which has to be sold for most any price which has an unsettling effect upon the market.

Q. What is the time lag for a shipment of avocados from Florida to California?

A. Approximately five days to California.

Q. Then there would be some further time in California?

A. Yes.

[fol. 182] Q. For inspection and handling and re-shipping—

Mr. Fourn: I object to the question as being leading and suggestive.

A. Usually about a day is involved in the inspection and/or rejection procedure in the particular California market. Then, of course, there is a delay involved of further trying to arrange for reshipment, which isn't easy to have a part load go to Salt Lake City or Portland. It is not only very expensive, but it is difficult to get the reshipment maintaining proper condition of refrigeration and speed.

Q. Taking into account the trip and all that happens in connection with the reshipment and resale, what would be the whole time period?

A. You mean the whole time involved in a rejected shipment?

Q. The whole time involved in a rejected shipment.

A. Usually I'd say seven or eight or nine days, but the difficulty involved there in many cases is that the fruit after it is rejected is not necessarily under supervised control which would insure its being kept in good condition. We many times take a loss on reshipment, because of it going out of our control and becoming ripened or damaged in some way or other.

Q. When you say "ripe", in what sense do you mean?

A. Soften.

Q. Is an avocado a perishable fruit?

A. Very perishable, if not kept under proper refrigeration [fol. 183] at all times.

Q. Mr. Kendall, have you requested your accountant in your office to compute from the sales records of the company the volume of avocados sold by your company since the commencement of 1954-55 selling season?

A. Yes, I have asked my accountant to work some figures out. I worked with him.

Mr. Ferguson: I will ask the Court Reporter to mark these (indicating) pages as Plaintiffs' Exhibit 18, for identification.

By Mr. Ferguson:

Q. Does the statement now marked Plaintiffs' Exhibit 18, for identification, truly reflect by the books and records of your company the volume of avocados handled in the four calendar years 1954, 1955, 1956 and 1957, also the distribution of sales under these three headings, "Sales in Florida", "Sales in California", "Sales in other States", the distribution in the years 1956 and 1957 and then a computation of the percentage, is that all true and correct?

A. Yes, those reflect the figures from our records.

Q. And the statement is true and correct?

A. Yes.

Mr. Ferguson: This document will be offered in evidence as Plaintiffs' Exhibit No. 18.

By Mr. Ferguson:

Q. Mr. Kendall, have you a demand for Florida avocados in chain store organizations or commercial merchants in [fol. 184] California, which you could not supply because of the California 8% oil test?

A. Yes, I think every year we have requests for avocados to be shipped to California both by people in California and by shipping brokers from this area here and we have never been able to comply with these requests for shipment.

Q. Tell us about these requests.

A. Especially in the beginning part of the season, it is only during the last part of the season which we are able to make the shipments with any—well, for one thing, Safeway organization for the last four or five years in California have used a great many avocados from not only me but other shippers down here and every year all through the month of October and early November they were trying to get all of the avocados they could from us. We were unable to make shipments then, even though it was at the peak of the shipping season and we were making shipments all over the United States, to Phoenix and Portland, right to the border of California, but we haven't been able to ship into the State of California during the month of October.

Safeway and Lucky Stores, one of the large stores, were interested in our supply of avocados and produce houses on the markets in Los Angeles and in San Francisco have asked for shipments repeatedly. In addition to distributors in Florida making mixed fruits are interested in big Florida avocados to include in their shipments of citrus going out [fol. 185] there. It has been true during the last part of October and early part of November. That is especially true during the shipping season of Booth 8s, we haven't been able to make a shipment out there of that one variety. We have another big peak and that is the Lula. We have a big supply available in October and early November.

Q. Can you name some of these persons or organizations?

A. I think I forgot to mention—

Q. With whom have you had communication about shipments to California?

A. I think I forgot to mention Calavo Growers, who represent me in the California markets, have also wanted to get shipments of avocados to handle—shipments of Florida avocados to handle in California markets just as early each year as they possibly could get them, indicating a considerable demand for avocados was at those markets at the time and they could use pretty near all they could get.

I think it should be understood we are in business or are operating on a day-to-day basis and a good deal of the communication is by telephone and we don't have a great deal of written requests, because we are in touch with our sales agents nearly all the time, every day, usually, and requests come up frequently in the conversation, "When will the company ship to California", or at least in that particular vein.

I think I might say in particularly mentioning names that Safeway organization, Mr. Jules Merkle, who is the East-[fol. 186] West Field Buyer with offices in Lakeland, Florida, and Mr. Jake Snoddie in Belle Glade. He is the Belle Glade buyer. Mr. Burris, who is their Eastern Produce Supervisor with offices in New Jersey, who used to be in California, came in the office in September of 1957, this season, and requested shipment of avocados to California, just as soon as they possibly could get them, because they had very favorable experiences with the Florida avocados in the last year and wanted additional shipments as soon as they could get them. I believe they indicated they had a number of people—their experiences in their stores were that they had a number of people who preferred the larger Florida avocado, possibly preferred them to the smaller California avocado, maybe for the mild flavor and low calorie content and lower oil content.

Anyway, he indicated he thought people were eating Florida avocados in the East, West and all over California and they had potential and actual customers for Florida avocados in the markets they serviced.

I might say the particular marketing organizations, such as Lucky Stores in San Francisco, use a large amount of Florida avocados whenever they can get them and certainly Calavo has ordered a large quantity during the season.

Q. Name some of the people in Calavo with whom you have had some communication on this subject?

A. Usually any communication through the year would be with the San Francisco manager, Ed Peters and the Los [fol. 187] Angeles manager Al Jones, in Los Angeles.

I might say, however, that there have been other people in the Calavo organization who expressed interest in handling avocados out there primarily from the sales standpoint because they felt, I think, they felt that other people were handling Florida avocados and there was no reason why they couldn't, since there seemed to be a demand and they wanted them.

Q. Did you get any letters on this subject from any of the Calavo people?

A. This (indicating) is on October 6, 1955, the traffic manager for Calavo in Los Angeles.

Q. What is his name?

A. Paul Helin. He said, "Am sure that Calavo's Western Division staff will do everything possible to get its share of Florida avocado business. We are hoping that your supply situation will permit us to be reasonably competitive."

Evidently, we had been in phone conversation because of this memo I wrote to Paul Helin on October 27, "With reference to our phone conversation I understand that both Lulas and Booth 7s in the last three or four days with warm, dry weather I would believe there should be shipments going to California towards the latter part of next week. Will let you know how the tests come out the first of next week in order to keep you posted."

Mr. Fourn: May I see those two letters?

The Witness: Yes.

[fol. 188] Mr. Ferguson: Well, finish the answer and then we will let him look at all of them.

By Mr. Ferguson:

Q. You go ahead and finish.

A. I will continue. Last year I have a notation here on a letter dated November 2, 1956, addressed to Mr. Harvey Futch, another shipper of Florida avocados to Calavo and to myself from Mr. Gene Royle, who was a sales expediter

at the time and he said, "Any information at all that you can give us will be greatly appreciated, because all of the boys are chafing at the bit to get sarterd on Florida avocados."

"The four or five truckloads for Oakland are all 14 size, so we hope this size will be available in quantities when the 'go-ahead' is given on shipments to California."

He further says, "We now have on order five truckloads for Los Angeles and another four truckloads for Oakland, California. These, of course, are just starters and our orders will be considerably more than this when the deal opens up for the California markets. We will appreciate receiving reports from both of you as to how the maturity is coming along, because we definitely want to be in on the ground floor for Florida avocados in California markets. This is the one thing that the boys are stressing the most, that we have them first so we can be in the deal from the very beginning."

And then this about four or five days later on November 7 Mr. Allen Mishaud, General Sales Manager of Calavo [fol. 189] Growers noted that, "Gene Royle is sitting with a number of orders and nearly all of our boys seem to have a good bit of backlog. If the interest and strength develops, we ought to be able to offer you a darn good market here for some of your fruit."

I haven't been able to look through my records sufficiently to find a great deal more. As I pointed out, a good deal of our conversations are on the telephone. I don't have a great deal of written memos other than just day-to-day indications.

Q. Plaintiffs' Exhibit 17, for identification, as to this classification "Sales in Other States", can you state in a general way what territory that includes?

A. "Sales in Other States" is the 47 other states. It is all of the other 47 states, principally in the Northwest, Portland, Seattle; Middle West, Chicago, Cleveland, Kansas City area, and in Southwest in New Orleans, Dallas, Houston, Antonio; East, Washington, Philadelphia, New



York and Boston. Primarily in the areas of large terminal market distribution.

Mr. Ferguson: You may cross-examine.

Cross-examination.

By Mr. Fourn:

Q. Mr. Kendall, you mentioned doing business as the Florida Growers Association; is that a sole proprietorship?

A. Yes.

Q. And is it true that you were in business from July 9, 1953?

[fol. 190] A. As the Florida Growers Association, yes.

Q. During those dates, have you had occasion to ship any avocados to California?

A. No. I didn't ship any to California. I believe other shipments were made by competitive shippers, but I believe at the time Calavo Growers wouldn't handle any. My competitors were shipping, but I wasn't able to ship any.

Q. Do you know of the varieties that your competitors were shipping in California during that term or terms?

A. No.

Q. How long have you been president of the South Florida Growers Association?

A. Since April of 1953.

Q. And what percentage of stock do you hold in that corporation?

A. Well, Mrs. Kendall and I have control or own all of the stock in the corporation.

Q. With respect to your groves that you own in your name, what varieties do you grow there?

A. Primarily Pollock, Fuchs, Waldin, Booth 8, Booth 7s, Lulas, maybe a few other minor varieties, but those are the primary ones, I believe.

Q. Prior to the inauguration of the Florida Marketing Order, is it true that the presence of a hurricane would tend to hurry the picking of avocados?

[fol. 191] A. No, but when a hurricane is around, people tend to want to pick a little more heavily than they ordinarily would. However, I might say the tendency in all

of our marketing prior to our Marketing Agreement and prior to these large increases in supply was to hold back our fruit because the prices were higher as we went along through the season, because frequently we didn't have many of the late varieties, enough of what you would call the late varieties. So the tendency was to hold even though a good deal would drop on the ground, it still was the tendency to hold.

Q. Prior to the issuing of the Marketing Order and when the warning of hurricane was marked, didn't a lot of that fruit hit, fruit in an immature condition, the market and have a tendency to spoil it?

A. There was a tendency to pick more of the varieties being picked at the time. You see, most of the hurricanes come in the period of August and September and during that time your Waldin variety is the principal variety and most of the growers would tend to pick their Waldin variety ordinarily, because in the six or seven week period, if a hurricane was coming, there would be a tendency to pick a little more heavily on the Waldin. I don't think there would be too much movement of Lula and Booth 8 prior to the Marketing Agreement program.

Q. That is, late hurricanes might cause them to market immature fruit?

A. I wouldn't say immature fruit, you would move more [fol. 192] Booth 8 and Lula.

Q. Prior to the Marketing Order, would a rise in the market price cause some immature fruit from Florida to be sent to the California market?

A. Well, it might be—I wouldn't say immature, it might be more fruit would go to market when the prices got higher. I think the same thing applies there as to the hurricanes, the growers would tend to pick heavily after market prices rose on the particular variety they were picking at the time.

Q. Is it true, Mr. Kendall, that the main varieties that everybody either planted or want most are the Booth 7, Booth 8 and Lula varieties?

A. Yes.

Q. Is it your estimate that in the future in Florida, say between the next five to ten years, that approximately 75

to 80 per cent of your total marketed production would be in those three varieties?

A. I believe, if you include Waldin in there, it might be. Waldin, Booth 7, Booth 8, and Lulas would be probably about 75%.

Q. Mr. Kendall, I show you Plaintiffs' Exhibit 13, for identification; now, the first page at the top part is a summary of tests made during 1954-55 season. Did you personally deliver any of the shipments to the Homestead, Florida Experiment Station?

A. No.

Mr. Ferguson: You mean samples?

[fol. 193] A. Samples?

By Mr. Fourt:

Q. Did you personally pick any of those samples?

A. I may have, but I couldn't say which ones.

Q. By far, the majority of these samples were not picked by yourself, is that right?

A. Yes.

Q. Page 2 of Plaintiffs' Exhibit 13 refers to oil tests made during 1955-1956 season. Did you personally deliver any of those samples indicated on that page to the Homestead Experiment Station laboratory?

A. No.

Q. Did you personally pick any of those samples?

A. No.

Q. Page 3 of Plaintiffs' Exhibit 13, for identification, purports to cover the oil tests for 1956-1957 season. Did you personally deliver any of those samples to the Homestead Experiment Station?

A. No.

Q. Did you personally pick any of the samples?

A. I may have, possibly. I might do well to explain the procedure in which these are gathered.

Q. May I ask you one more question as to the sheet?

A. Yes.

Q. As to this 1956-1957 season, would you say that by [fol. 194] far the large majority of the samples were not picked by yourself?

A. Right.

Q. The last page of Plaintiffs' Exhibit 13 purports to cover the 1957-1958 season. Did you personally deliver any of those samples to the Homestead Experiment Station?

A. No.

Q. Did you personally pick any of those samples?

A. I may have.

Q. Would you say it would be true that the majority of these samples were not picked by yourself?

A. Right.

Q. Do you wish to explain the procedure, now?

A. I think it is only fair to state that I have around 200 to 250 people working for me. The man in charge of my field work, the superintendent of my field crew and his assistant are the ones who are in charge of harvesting, making the selection of samples and delivering them to the experimental station and bringing back the results after they are obtained. So there would be no occasion to make a personal test.

Q. Mr. Kendall, judging time from today backward at what period or point of time did you determine to test the California Oil Standard.

Mr. Ferguson: That's objected to. I'll object on the grounds it is not proper cross-examination.

By Mr. Fournier:

Q. You may answer.

[fol. 195] A. I am not sure as to the point of time, but I believe it goes back over the last three or four years when we found—I believe that it would be about certainly, as I said, in the last couple of years anyway.

Q. Taking the date on Plaintiffs' Exhibit 13, for identification, the test appeared in October, 1954, did you consider this problem of the California Oil Test as early as that date?

A. Your question is did I consider the California Oil Test problem as of the date of the test? The oil problem was our concern.

Mr. Fournier: I withdraw the question.

By Mr. Fourn:

Q. Did you consider the filing of a suit, of a lawsuit, to test the California Oil Standard as early as October, 1954?

A. As a matter of fact, I don't know just when we did consider it. It has been considered over the past several years, but I don't know just when. It is pretty difficult to pinpoint the exact time we decided to question the oil content.

Q. In fairness, would it be fair to say several years would be at least January 1 of 1956?

Mr. Ferguson: I am going to object, because you are using a vague word "considered". I don't know what you mean by that and I don't know if the witness knows what it means.

By Mr. Fourn:

Q. You may answer.

A. I'll be frank, I don't know when we did come to the [fol. 196] decision to.

Q. Well, perhaps I can rephrase the question. In November, 1956, did you have a probable lawsuit in mind testing the California Oil Standard when you requested tests be made by the Experiment Station at Homestead?

A. I don't know whether you can say we had a possible lawsuit in mind. We weren't looking for a lawsuit, but over a period of time we Florida growers felt the oil content standard was unfair, but I don't know just when we arrived at the decision to question it.

Q. Your best estimate is several years back from today?

A. Yes.

Q. Directing your attention to Plaintiffs' Exhibit 13, for identification, on the first page, 1954-1955 season, is there any particular reason that a test would have been selected on that particular date, October 14, 1954?

A. No, other than what I stated before. We were usually looking over Dr. Harding's shoulder and asking him how the oil content was running—

Mr. Ferguson: You mean Dr. Harkness.

A. (Continuing) Dr. Harkness and asking him how the oil content tests were running and then we would try to figure out what groves, what varieties might possibly come close to the 8% and that is when we started gathering our samples.

Q. What is the value of your—first of all, what is the [fol. 197] location of your packing shed?

A. I object to you calling it a "shed".

Q. I will sustain your objection.

A. It is called the Pink Palace.

Q. Where is it located?

A. U. S. Highway No. 1, between Princeton and Goulds, which is approximately 25 miles south of here.

Q. What should we call that establishment?

A. A packing house.

Q. What is the approximate value of your packing house at current market prices?

Mr. Ferguson: I don't see how that is a proper question.

A. It is about \$300,000 worth of building and about \$100,000 worth of machinery and equipment, with another forty or fifty thousand dollars worth of improvements. Approximately \$500,000.

Q. When was the packing house built?

A. It was completed in August, 1955. I had other packing facilities, however, which were started in January, 1940.

Q. At any time from August of 1955 until today, have you purchased and set up any testing equipment for use in the packing house for the purpose of making the California Oil Test on Florida avocados?

A. Not in my packing house.

Q. What reason, if any, ~~did you not~~ do so?

A. Well, we relied upon the Experiment Station to make [fol. 198] whatever tests were required and we didn't feel the necessity of big testing equipment for our use alone. As a matter of fact, the Experiment Station purchased their equipment at the request of a number of growers and handlers.

I believe I may say we never made a shipment of avocados to California until after we had made tests or had tests made by the Experiment Station of these particular groves we wanted to pick the fruit from for California



shipment. We always kept the fruit that went to California separate all the way through the picking and packing operation, pre-cooling and so forth. That was so there would be no chance in our mind to mix a lot of fruit that would go below the 8% after it got out there.

Q. Was any effort made to test fruit other than the fruit which was tested in Homestead as previously described in your previous testimony?

A. No.

Q. To rephrase that, were any tests made of fruit selected at the packing house?

A. No—with this possible exception, if a grower that picked a lot of fruit, sizable quantity of fruit, we might take a sample out of that and run it to the Experimental Station and try to get a test on it right quick to see if it was possibly suitable to ship to California.

Q. Would you say that would be an unusual situation, as far as the usual testing method?

[fol. 199] A. The usual testing method was to check the grove and proceed with the harvesting of the samples and have them tested.

Q. Did you ever select samples from the fruit after it had been packed and loaded on a truck?

A. No.

Q. Directing your attention to Plaintiffs' Exhibit 18, for identification, is it true that 1955-1956 California avocado production was limited this year, that is, to California was a short year?

A. I don't recall. I think the statistics, which would answer that question, would be better than me. I am not familiar with it at the moment.

Q. Was the 1956-1957 year a short year as far as California production was concerned?

A. I don't know. I am not familiar with the California production figures at the moment.

Q. Do you have with you the figures for sales in California for 1954 from the South Florida Growers Association?

A. I don't think so, no, I had a record of some shipments—I don't know if that is a complete recap on it, I am not sure.

Q. Would it be possible—

A. I have some figures on the 1954 shipments, that might be all there were, but I am not sure.

Q. Would it be possible to obtain those figures for us?

A. I could obtain them for you—total shipments made to [fol. 200] California in '54-'55, the only reason they aren't here is because they couldn't be obtained because of the shortness of time to get the proper figures. We started 1957 and worked back to obtain these figures.

Mr. Fourn: Would it be possible to arrange with you to have the figures provided to us?

Mr. Ferguson: Let's agree they will be added to Plaintiffs' Exhibit 18.

Mr. Fourn: All right. Is it possible to get the appropriate entries in the other states?

The Witness: I am not sure we can get the sales figures in Florida. I am not too sure of the sales in Florida. Sales in other states—we can get the sales in Florida by taking the total less the sales in California. You take the column "Sales to California" in 1955 and take the "Sales to Other States" in Plaintiffs' Exhibit 18 and—

Mr. Ferguson: Well, as soon as possible, but not necessarily while—these are old records and, frankly, I settled for these because of the time element. I asked for them.

Mr. Fourn: Would it be possible that a new Plaintiffs' exhibit number could be assigned to the new paper which would provide a further exhibit rather than an extra entry?

Mr. Ferguson: We can do it in time for the Reporter here to—

Mr. Fourn: Well, after you complete the new document [fol. 201] and assign a new number. We can get a copy of these other shipments and put it with this other information and not expunge it from the record. There will be some duplication, of course.

Mr. Ferguson: Let's start with this volume figure, there will be some duplication of a similar exhibit, and leave it as it is.

That number will be 19.

Mr. Fourn: That is 19, an exhibit similar to 18, but with the added figures for '54 and '55.

The Notary: Let the record show we are reserving that number for the additional information.

Mr. Ferguson: Can we also agree that it will be covered by the testimony of the witness with respect to Plaintiffs' Exhibit 18 for identification?

Mr. Fourt: So far as foundation for the document?

Mr. Ferguson: Yes, as far as the figures and accuracy.

Mr. Fourt: In fact, there is no testimony regarding 19.

Mr. Ferguson: Only that we agree the same testimony will apply.

Mr. Fourt: Right.

(Thereupon, the deposition was adjourned at 5:00 p.m., to be resumed at 7:00 p.m.)

By Mr. Fourt:

Q. Mr. Kendall, if I might see the yellow sheet and the other computation that you refer to.

[fol. 202] A. Which one is that, now?

Q. The computation and—yes, that (indicating) sheet and the yellow sheet too.

(Examining documents.)

Q. (Continued) Mr. Kendall, I hand you this document and ask you if that is a complete listing of your shipments to California in 1954 and 1955?

A. To the best of my knowledge, it was.

Mr. Fourt: Mr. Reporter, I should like to have you mark this copy (indicating) and ask you to mark it at the top as it is in pencil 1954-1955 Shipping Season, next in order. That is Defendants' Exhibit "P".

By Mr. Fourt:

Q. Mr. Kendall, is this the document which I referred to just a moment ago, 1954-55 Shipping Season, now marked Defendants' Exhibit "P" for identification?

A. Yes.

Mr. Fourt: Mr. Reporter, I hand you a document headed California Avocado Shipments 1956-1957 season, and ask you to mark this as Defendants' Exhibit "Q".

Mr. Ferguson: What is that?

Mr. Fourn: '56-57.

By Mr. Fourn:

Q. Mr. Kendall, I hand you Defendants' Exhibit "Q" for identification and ask you if this document enumerates all of the shipments from the South Florida Growers Association, Inc., from Florida to California during the period [fol. 203] 1956-1957 season?

A. To the best of my knowledge, it does.

Q. Mr. Kendall, I wonder if you would make available to us your folder which you previously said contained all of the documents listed in Plaintiffs' Exhibit 17 for identification?

A. Here are four shipment records on the four shipments that were made in the season of '54-55 which refer there as having part of each rejected. There is the folder (indicating) covering those four.

Mr. Ferguson: While you are looking at that paper, may I have the last paper identified?

Mr. Fourn: I will give you both of them.

(Examining documents.)

By Mr. Fourn:

Q. Mr. Kendall, I hand to you the documents which purport to cover the shipment on November 10, 1954, which appears in the top paragraph of Plaintiffs' Exhibit 17 for identification and ask you if you can inform us from those documents what the net return from the South Florida Growers Association was from that shipment?

A. No, I don't think—wait a minute, yes, the net return would be the total of the two, \$1700.26, and \$423.53.

Q. Now, from those papers can you tell us your profit on the shipment?

A. There is no question of profit, the question is raised as to loss.

[fol. 204] Q. From the figures you gave, what expenses or items would you deduct to determine the loss or profit?

A. As I stated, upon arrival at Los Angeles 118 rejected

upon test of oil content and reshipped to Phoenix, Arizona. Sales in Los Angeles average \$4.43 per box, whereas, sales in Phoenix were only \$4.17. If you take the difference from 118 boxes and multiply it out, it comes to \$30.68 and then added transportation from Los Angeles to Phoenix, \$29.17 makes a total of \$59.85, which is what we claim as a loss on the shipment.

Q. Mr. Kendall, is it not true that the sum \$59.85 shown in the paragraph 1 of Plaintiffs' Exhibit 17 represents a reduction in profits to the South Florida Growers Association which was caused by rejection of the shipment in California?

Mr. Ferguson: I will object to that as being purely argumentative. The exhibit states the difference in the yield. There is no question about profit. If it is possible here to determine profit, you can go outside of the whole thing and get a cost accountant to analyze the business of the company to determine whether there was any profit in any one particular sale.

By Mr. Fourt:

Q. Did you hear the question or do you want it read back to you?

A. I heard the question, but I couldn't answer that without an accountant to analyze the costs and so forth. As far as we were concerned, it represented a loss.

Q. It is not a loss, is it, Mr. Kendall. It represents a [fol. 205] loss only if California had accepted the shipment, and that would have caused your returns to the Florida organization to have been increased in the amount of \$59.85?

A. Yes, we would have got the \$59.85 we were supposed to in Los Angeles along with the rest of the shipment.

Q. Right. You have no information as to your actual net profit or loss on this shipment?

A. I haven't any information here and it would take a good deal of accounting.

Q. Which is a complicated procedure because of the scope of your operation?

A. I would say that's a conservative estimate as to the

losses. In sending this fruit to the Phoenix market on top of the fruit that is already there, the price of the fruit was reduced as the result of the fruit going up there on top of that that was there, as well as the shipment that was directed to Phoenix. We ship to Phoenix without going to California and when this fruit comes back on the Phoenix market, it depresses the price of all the fruit. I just analyzed what I lost on it, if it were sold in Los Angeles. That's what I referred to when I said it went back to Phoenix.

Q. Directing your attention to the second paragraph on Plaintiffs' Exhibit 17 for identification, involving a shipment on November 11, 1954, is it true that the last figure being \$394.20 represents the sum which South Florida [fol. 206] Growers Association did not receive as a result of the California rejection which they would have received, if the shipment had been accepted?

Mr. Ferguson: I will stipulate that that is true of everyone of these. That is what it is intended to show.

By Mr. Fourn:

Q. Is it further true, Mr. Kendall, as of this moment, you are unable to say the actual net profit or loss to the South Florida Growers, Inc., which left Florida approximately November 11, 1954?

Mr. Ferguson: I think it is argumentative.

The Witness: You started to ask about a figure we got that was profit?

By Mr. Fourn:

Q. No, net profit.

A. How can you determine the net profit without going back to the records and find out what it cost to pack them and what it cost to get them out there? As far as we were concerned, we shipped to California on that market and a good deal of the boxes were sold at a certain price. When they were rejected, then we re-shipped elsewhere and we lost money—we figure we lost money as the result of that.

Q. To come back to my question, however, because of this



tremendous auditing problem, which would be involved in finding the cost on November 11, 1954, you are unable to say or to give us the actual net profit or loss on this shipment?

Mr. Ferguson: Again, I say that this is just argument [fol. 207] and quibbling.

These are losses. They had sales for these and they lost the money.

The Witness: We are not in business for shipping at a loss or shipping and breaking even. If we lost a certain amount of money, we lost it.

By Mr. Fourn:

Q. However, Mr. Kendall, isn't it true you are unable to give the figure of actual net loss or profit on the shipment of November 11, 1954?

Mr. Ferguson: Same objection.

A. I can't answer any differently.

By Mr. Fourn:

Q. Is it true you cannot give that answer because it would require an auditing?

A. Yes, it would require a further audit.

Q. Now,—

A. I might say that in shipping this fruit to California a lot of this was pretty well booked on arrival. I mean, before shipment in some cases, in fact, we very seldom ship without some assurance because we send them out there on fairly firm sales, that's about the only basis we did ship on. When we run into this difficulty there, we actually figured we took a loss on it.

Q. In order to save time, I believe Plaintiffs' Exhibit 17 for identification shows 7 shipments during the period 1954 through 1957, is that correct?

A. That's right.

[fol. 208] Q. Is it true, Mr. Kendall, that the figures shown as a loss for each of these shipments is the amount by which the gross returns to South Florida Growers Association,

Inc., were reduced as a result of the actions of the State of California?

A. Yes.

Q. Mr. Kendall, has the South Florida Growers Association, Inc., ever attempted to recondition that portion of the lot in California which was rejected because of the failure to meet oil test standard, or has the consignee in California?

A. The Calavo sales organization of California in their offices, I believe, have attempted to recondition them.

Q. Have you or any of your consignees, such as Safeway Stores or Lucky Markets attempted to recondition the lot or portion of the lot which was rejected?

A. Well, Calavo handles our sales and organization out there and if there is any difficulty they handle the negotiations with the Inspection Department.

Q. Have you during the years 1954 through 1957 given any instructions to Calavo Growers, Inc. regarding reconditioning the lot or portion of the lot which is rejected by the California Inspection Service?

A. I don't know that I have told them exactly how to handle the actual reconditioning, but when we do have some difficulty with a lot, there are some conferences on the telephone between the various persons in charge, when [fol. 209] it is in Los Angeles or in San Francisco, about the disposition of the lot and whether we should ship it to Phoenix, Portland or Salt Lake City.

Q. I am referring to the reconditioning or reshipping with respect to the specific instructions that are given Calavo Growers as to the physical re-sorting of the fruit which is rejected.

A. No, I haven't told them that. I think in the trade it would be understood, in the trade, anyone representing you should make every effort they could to handle the shipment to the best advantage. If they felt it would be best to re-consign it or re-sort it, it should be done.

Q. Could you list at the present time the 10 leading marketing centers, municipalities or areas of the South Florida Growers Association for the last season '57-58 season?

A. You mean list—

Q. The most important centers.

A. Distribution centers?

Q. Yes.

A. For my particular organization or the industry?

Q. No, for your particular organization.

A. I couldn't give you the exact figure without looking at my records and I don't believe they are in shape where they would reflect it without a great deal of tabulation.

Q. Can you give us the leading 10 centers for the South Florida Growers Association?

A. I don't know whether I can list the exact 10. There is New York, Chicago, Cleveland, New Orleans, Houston, [fol. 210] Dallas, probably Washington.

Q. Washington, D. C.?

A. Yes, and the Northwest, we usually combine Portland and Seattle and certainly the California market should be in there, either Los Angeles or San Francisco or both.

Q. At the present time is your Los Angeles market smaller than any single city you have otherwise named?

A. It would be difficult for me to tell, because I don't have access to the figures at the moment. It varies a good deal according to the marketing pattern of the time of year and so forth. It would be a little difficult for me to give you that.

Q. Is New York your best market?

A. No.

Q. What is your best market out of the State of Florida?

A. Oh, probably Chicago, we take distribution areas. With Calavo it is a little difficult to tell where this fruit is going after they reship it. You understand Calavo is the sales organization for most of my fruit. It is hard to pinpoint exactly, but I would say Chicago is one of the best markets.

There, again, I might say New York quite readily because—well, the Calavo organization of New York isn't as good a distribution center for me as it may be for one of my competitors who might say New York is one of the best distribution centers. So my figure may not be typical of the industry.

Q. What is the next leading center, approximately, to [fol. 211] Chicago?

A. I would say probably the St. Louis-Kansas City area.

Q. What is your third choice as the third largest market?

A. I would like to group by the East and put Washington, Philadelphia and New York together. That is the way they load the trucks. Usually they stop at Washington and Philadelphia—we don't know how much is coming off. It isn't hard to stop when you are going right along the line, and that is why I hesitate when I answer that question as to the exact shipment to various points.

Q. Would you say the Los Angeles market during the 1957-58 marketing season to date is smaller than the Chicago area market?

A. That is the '57 to '58 to date?

Q. Yes.

A. I think so, yes.

Q. And is the Los Angeles area market for the same year smaller than the St. Louis-Kansas City market?

A. I think probably. But you must remember that in the St. Louis-Kansas City market we aren't under restriction. We can ship from the first of July right straight through. Remember you are comparing a total of six or seven months shipping, as compared to the Los Angeles market for maybe a month or six weeks or two months.

We ship into Los Angeles in September or October. I can show you where Los Angeles is one of the larger markets in the country for the Florida avocado.

Q. For the marketing season 1957 and '58 to date, was the Los Angeles market smaller than the New York market area—let's make that Washington, Philadelphia and New York market area?

A. Yes. There again you have the same reason. You are shipping to those areas through the summer and fall.

Q. If I can lump together the cities, is it not true that the San Francisco marketing area is smaller for the same period of time than either the St. Louis-Kansas City area or the Chicago area or the New York-Philadelphia, Washington area is concerned individually?

A. You mean the same period of time? If you took the same period of time we were shipping to the San Francisco marketing area in a given period like in November, when we are allowed to go in California with fruit at 8%, I think that the San Francisco market would probably be

right next to Los Angeles as one of the largest markets in the country. You can't compare the restricted shipments we made to California in any one season in total to the markets such as San Francisco or Los Angeles. They wouldn't come up to the St. Louis and Kansas City area where we ship for a period of six to eight months.

Q. Is that true of the Chicago area?

A. Yes.

Q. Is it true of the Washington, Philadelphia and New York area?

[fol. 213] A. Yes.

Q. Mr. Kendall, isn't it true that there are certain conditions which can affect avocados after they leave your packing plant, which may affect their sales value in the ultimate destination?

A. If they are properly handled, I don't think so.

Q. However, if they were improperly handled so as to cause a certain defect, which you had no control—

A. We have pretty good control over the shipments because we pre-cool all fruit shipped under refrigeration, we check the shipments daily and on arrival the temperature is taken and we eliminate the outside influences pretty thoroughly on all of our shipments. Now, if it was mis-handling or if there was delay for any reason, then we might have difficulty.

Q. Isn't it possible that Lucky Markets, for example, in California could put some South Florida Growers Association avocados in storage, thus rendering these avocados in poor condition?

A. I don't think so; if they were received in good condition, I don't think they would keep them so long as to cause—our experience with Lucky and Safeway, they order shipments to arrive practically on time. Their orders are based upon daily or weekly need. They order ahead of time and schedule the shipments to come in as they need them. They could keep them conceivably—suppose they ordered a few days too much of a supply, that storage period [fol. 214] wouldn't hurt Florida avocados, because they will keep several days or weeks in storage under proper conditions.

Q. Would you say, although it's improbable, it is pos-

sible that Lucky Markets might hold them too long in storage before placing them on the retail shelf?

A. I doubt if they would. They don't buy any more than they are going to use between a two or three day business period. Lucky Stores would have no difficulty at all disposing of a truckload through their markets in two or three days.

Q. Isn't it possible your consignee might damage the fruit of South Florida Growers Association through excessive low temperature causing freezing damage?

A. It is possible, but not probable, because their coolers are set up for proper refrigeration for any of the produce they handle. It is just some—I have been in Lucky Stores' warehouse and they have a modern plant. They have a cooler set up to handle the type of produce they handle.

Q. Mr. Kendall, in respect to the operation in Florida, isn't it true the Federal-State Inspection Service maintains inspectors in Florida packing houses?

A. Yes, practically all the time.

Q. Has this inspector ever rejected any of the fruit in the packing house?

A. We don't use the word "rejected" because he just doesn't accept the fruit. He doesn't allow it to be stamped. [fol. 215] He doesn't accept it, unless it meets the specifications of the Avocado Administrative Committee which are currently in effect.

Q. Is it true then that the inspector who is stationed at the South Florida Growers Association packing house has on occasions refused to accept some of the fruit passing through the house?

A. Not that I know of. In other words, our procedure is to bring the avocados in, in field boxes, bulk, and then put them into our polishing-sizing equipment and right at that point the inspector checks for size, or weight, as the case may be. So, before the fruit is packed, he is checking it. Now, he would have no occasion to reject them from that point on, because he has checked them before they are packed and it is right under his supervision. It is right outside his office where the fruit is stamped as it goes right by to the packers.

Q. Has the inspector had occasion to refuse to accept



or approve fruit at the stage of the operation where he makes the inspection?

A. Oh, yes, if they are undersized fruit. He stands there and continually checks to see if they are undersized and if they are undersized, they have to be destroyed.

Q. What happens when the inspector discovers fruit at that stage of the process and it is undersized?

A. Any undersized fruit can't be shipped. We have to dump it.

[fol. 216] Q. At what stage does the inspector make the inspection?

A. He makes the inspection at the end.

We have bins where the fruit comes off the sizer and at the end of that sizing belt where they go into the bins is where he is checking them. He checks them there and he checks them in the bins as the packers are packing them. The checking is right there where they drop off the belt in the bin and he is checking the bins right there.

Q. Can you give the approximate percentage of the fruit which does not pass the Avocado Administrative Committee regulations at the point where they make the inspection?

A. That would be very difficult to say, because most of the growers that are picking for us—they have what they call a ring sizer. They have this right with them and check the size of the fruit when it is picked. If some way or another one gets through, that is caught at the point where it comes out at the end of the sizing belt before it goes into the bin, and it doesn't get packed. However, in a few cases some growers who may not have used a picking ring may come in with some fruit which is maybe 5%, maybe 10% undersize, well, that fruit is all caught right at the point and not packed. It is eliminated. I would say our percentage varies from zero up to 10 or 12 per cent on an average. For good picking it is around 3, 4 or 5 per cent.

Q. Would it be true as to the most ideal shipment that the percentage of rejections would be near zero on occasions [fol. 217] and on other occasions would be 10%?

Mr. Ferguson: He didn't say that.

By Mr. Fourt:

Q. Would you say the fruit coming into the plant that is rejected would be or might be 10%?

A. Nobody wants any fruit eliminated because it doesn't meet the Avocado Administrative Committee regulations. So we all try to pick to the best of our ability under the limitation of those regulations and if we go very high in our percentage of loss as the result of undersized fruit, it is because someone is making a bad mistake. They should note what the Avocado Administrative Committee's regulations are. I believe all of the growers do know what the Avocado Administrative Committee's regulations are. Most of the growers know what the picking schedules are and recognize them. I don't think any grower picks his fruit with the idea of having them rejected at the packing house, so they are very careful.

Q. Is it true that on occasions there are serious errors of judgment and there might be as high as 10% rejected by the inspector?

A. Yes. In fact, I might say we have had some growers that just pick some fruit and brought them in and when they were checked, maybe the whole thing was unable to be shipped. But that has been in very few cases. We have gone on around on this thing over the last four years and the growers have learned what their limitations are and they try to follow it, because they know they have to.

[fol. 218] Q. Is there any average figure as to the size of the shipments coming into your packing house; that is, do they come in in lots of 100, 150 or 300 or what is the size in which they come into your packing house?

A. Mr. Fourt, they vary considerably all the way from 100 bushels to a truckload. As a round figure, depending on the size of the truck, anywhere from 150 to 250 boxes at a time. I would say, though, in Florida our average size of shipment is probably closer to 75 to 100 boxes and smaller.

Q. Now, you are referring to the size of the lots entering your packing house?

A. Yes.

Q. Are these lots of 75 to 100 boxes of intermingled avocados passed over the grading line?

A. They are handled as separate lots and a lot ticket follows through where they are graded and sized and packed, but they are not commingled in lots. They are kept separate until they reach the bin at the end of the sizing belt where they are inspected and put in bins. So they are not commingled until they go into the bin.

Q. When you say the bin, you mean they are placed in a bin according to the size of the fruit?

A. Yes.

Q. Is it not true that in these bins there may be avocados [fol. 219] of numerous producers there from the last two or three days?

A. Not over two at one time, because we run lots that are a little larger in size than would be in other producing areas. I can't pinpoint one when I say 75 to 100, I mean a truck might bring in 75 to 100 and they might bring in three trucks or so from the one grove. We run a lot of 200 or 300. So we actually run larger lots than 75 to 100 in a great many cases.

We try to eliminate the mixing of lots in the bins.

Q. During the 1957-58 season to date, can you estimate the number of different groves which would contribute fruit to your packing house?

A. Well, do you mean groves under my management other than my own, you mean individual growers? In other words, I own or handle probably, I guess, about 40 to 50 groves.

Q. Consider each grove as one unit.

A. Well, I guess we actually get fruit in our packing house from say 75 groves, I guess. You see, for example, I know Mr. Krome has maybe 100 acres. They are all broken down into probably 15 or 20 days.

Q. Do you have any typical size of shipment in terms of number of flats you would make to the Chicago marketing area?

A. Well, a truckload runs 1600 to 1700 flats and as I pointed out earlier, Chicago is one of the main distribution centers for Calavo and many times we ship to Chicago for instructions and the truck may go on to Detroit, on to [fol. 220] Minneapolis or something like that. So we mail 1600 flats to Calavo, Chicago, but maybe they are redistributed to many places.

Q. Does the South Florida Growers Association do any shipping by railroad carload?

A. No.

Q. Is the figure 1600 to 1700 flats per truck typical shipment to the Chicago market?

A. Yes.

Q. In a truckload of 1600 to 1700 flats, can you estimate how many groves contributed to that shipment?

A. No, that would be almost impossible to do.

Q. Would it be likely to be more than five groves?

A. On some days it might run five—on some other days maybe it would run two or three. When we know we are going to load a certain market area and we want a certain size of picked fruit, they are all out of one grove or maybe you would get two growers and pick all the fruit just for that particular size. We may pick for two days in order to get a certain variety to go to a certain market. Maybe one grove—I would say from one to five would be a fair estimate.

Q. Would it be true to say it is extremely unusual to have one grove contribute a truckload of 16 or 17 hundred flats?

A. I wouldn't say extremely, but I would say unusual, because I think conceivably we have had that many, but it is not usual.

[fol. 221] Q. Would it be true then to say at least 95% of your shipments would come from 10 groves or less where the shipment is 1600 or 1700 flats?

A. Yes.

Q. Does the South Florida Growers Association market under several labels?

A. Yes.

Q. Could you describe what the labels elaborate?

A. You mean the grade?

Q. Yes. That is the answer, that it is a grade. Would you explain what your label signifies in terms of grade?

A. At the present time we don't have them registered as certain grade labels. I believe it was just put through at the last meeting, or two, where all of the packing houses will have to register their labels for grade, but at the present time our label does not signify grade.

Q. Is it the practice of the South Florida Growers Association to pack premium packages, which would generally bring premium prices?

A. No.

Q. At the present time, the 1957-58 season, there has been in this season to date the one grade mark for the South Florida Growers Association?

A. Right.

Q. In previous years you shipped under different grades? [fol. 222] A. Yes, three or four years ago we shipped under different grades, but last year, or so, we shipped under one grade.

Q. Mr. Kendall, were you active in the industry in 1953 and 1954 in the sense of working towards the adoption by the industry of the Marketing Order?

A. I think I could be termed a reconstructed individual. The inception of the Marketing Agreement came from the Florida Growers, as a grass root movement and came from the Florida Growers, who with the impetus for trying to determine a more orderly procedure for setting maturity on grade and packing standards and, after the growers got the thing rolling, they applied to Washington. Then the packers came along and I have been active and gone along in trying to do what I could in helping the program, because I believe it to be a constructive program.

Q. At the time was there a referendum held in among the producers and handlers by which ballots as to whether they would be in favor of the issuance of a Marketing Order?

A. Yes.

Q. Did the South Florida Growers Association, Inc., vote in favor of the issuance of the Marketing Order?

Mr. Ferguson: That is not a proper question.

A. It is fair to say I voted for it. I believe it is a good program.

By Mr. Fourn:

Q. What was one of the considerations which led the South Florida Growers Association, Inc., in favor of the [fol. 223] issuance of a Marketing Order, the fact that the

handlers operating under the Marketing Order would be exempt from the Sherman Antitrust Act?

Mr. Ferguson: I don't know why you are asking these questions. It is part of the law. The law says so. I take it they did it because of all of the reasons stated in the law.

A. As a handler that wasn't given consideration. I haven't heard that thought mentioned. I believe the impetus came from the growers and handlers and we went along because we felt that this was a progressive step in the marketing of Florida avocados.

Mr. Fourn: I have no further questions.

By Mr. Norris:

Q. Do I understand correctly, Mr. Kendall, that prior to 1954-55 season neither the South Florida Growers Association or the Florida Growers Association, which was its predecessor in business, sold any avocados on the California market?

A. Right. I might add that it wasn't because I didn't want to sell them, it was because Calavo Growers of California have acted as my distributors on an exclusive basis at that time and distributed in the 47 other states and my competitors began to sell in the California market before the '54 season, so that put me at a competitive disadvantage. When the question was brought up, the sales department consulted with other parties and the Calavo Growers came to the realization that if other people were going to sell avocados in California, they were going to sell [fol. 224] Florida avocados in California.

They as a sales organization represented Florida organizations, I am one of three, and they decided they should be able to handle Florida avocados without prejudice of California avocados. But that wasn't done immediately, it was done after a great deal of consultation.

Q. Do you now market avocados in California exclusively through Calavo?

A. I think all of my sales to date have been made through Calavo in California. I hesitate, because there are other brokers in the state which make up mixed loads. They



might have bought some of my fruit and shipped it to California, but I have no real knowledge of it.

Q. You have had no direct sales to Safeway or Lucky Stores?

A. Only through Calavo for the California market. I believe I am safe in saying that, I'm not sure, but I believe I am safe in saying that.

Q. Was that part of your agreement with Calavo prior to 1954 that you would market avocados only through the Calavo organization?

A. I'm not sure at what time we had the exclusive arrangement with them.

Q. My question was: Did you have an agreement with Calavo or were you voluntarily using Calavo exclusively?

A. It was by agreement with Calavo.

[fol. 225] Q. Do you mean by that, if you had sold direct to a chain store in California during this period Calavo would have ceased to operate as your bargaining agent?

A. They threatened to do that.

Q. This is the reason you did not ship any avocados to California before 1954?

A. Right. I won't say this was on the basis of an exclusive arrangement in the California market only, it was through the rest of the United States also.

Q. Mr. Kendall, I refer you to Plaintiffs' Exhibit 18, Summary of Avocados Handled in the Calendar Years '54-55, '56-57, will you note that Exhibit 18 reflects that in 1956 season 15,055 bushels were sold in California. Would you consider that a normal or abnormal volume of sales in California by your organization?

A. I would say that if we were on restricted—

Q. That is not my question.

Mr. Ferguson: You asked him if it was normal.

Mr. Norris: His answer is in the form of hypothetical terms. He is talking about what he would have done, if we didn't have the present law in effect.

Mr. Ferguson: Your question is argumentative. You are asking him, if it is normal or abnormal.

Mr. Norris: That's correct, that's what I want to know.

Mr. Ferguson: You have no standard to know what is normal and what is subnormal.

[fol. 226] By Mr. Norris:

Q. The marketing condition under the existing law, would you consider that normal or abnormal?

A. Well, under the existing law whereby we are not able to ship any variety except the Lula until late in November, if I had full cooperation from the sales agents in California, I would say that was not abnormal.

You see, my figures, I think, are probably not typical necessarily of the industry in that respect, because there is a good deal of pressure and we recognize it at times, from the California avocado growers who use their own sales organizations in California. When that pressure is on, then they tend to put a little pressure on me possibly. I won't say to discourage me, but there isn't quite the opening in the California market there might be to their competitors who are not so bound.

Q. How do you account for the decrease in the volume between 1956 and 1957?

A. This year, I believe, we were retarded a great deal. Our oil content on the Lulas didn't come up to 8% until late. We weren't able to get rolling on this and get them in the chain stores merchandising our avocados and as a result they didn't get interested in them.

When a large merchandising organization gets interested in promoting a product it takes a certain time to get lined up. When they do get rolling, they roll right along pretty fast and this year because of the prices of California avo- [fol. 227] cados being lower so much earlier and our fruit was held back somewhat longer, we weren't able to get into the markets as easy as we have other years.

Q. Isn't it true that 1956 was a year of an unusually short crop of California avocados?

A. I am not sure about that. I do know 1957 looks like their heaviest crop.

Q. I asked about 1956.

A. I'm not sure it was unusual. It was lighter than the previous year or lighter than this year, but I don't know that it was unusually light.

Q. Would you say that the short crop in California is one of the principal reasons why your volume was so high in the 1956 season?

A. It might have contributed to a certain extent to that, because there was high prices out there and it was easier for us to get rolling and get the merchandising outlets interested in the fruit. When they found they sold so well, they kept on using them.

Q. Directing your attention to the '54-55 season, Mr. Kendall, did you ship any avocados to California in January of 1955, to the best of your knowledge?

A. I will have to look at that sheet (indicating).

(Examining document.)

Mr. Ferguson: January, 1955?

Mr. Norris: That's correct.

By Mr. Norris:

Q. Referring to Defendants' Exhibit "P"—

[fol. 228] A. I don't believe I shipped in 1955.

Q. Does Defendants' Exhibit "P" contain the ones rejected under the 8% oil content?

A. No, this indicates that some were rejected.

Q. But does it show all of the shipments?

A. I believe so.

Q. Isn't it true the Lula season continues through January, Mr. Kendall?

A. Lula shipping season—it can continue, but we can ship from the first part of October on. We have a longer marketing—

Q. Does it continue through January?

A. If we have the fruit available. We have tried to move our Lula avocados when we can move them to the best advantage.

Q. Do you know whether you were shipping Lula avocados in January of '55?

A. I am sure we carried all along.

Q. Did you then send any to California?

A. No, not according to that (indicating) record.

Q. Do you know why you did not send any Lulas to California in January of '55?

A. I don't recall, no.

Q. How about January of 1956?

A. That is on the same sheet. I don't find any shipments in January, 1956. I don't see any.

Q. Isn't it true that the oil content of the Lula variety [fol. 229] would be higher in January than in November, December, or October?

A. I'm not sure. I couldn't vouch for that. I think there were some Lulas that didn't pass the 8%.

Q. Did you ship any avocados, Lula or otherwise, in January, 1957?

A. January, 1957, yes. We sent four truckloads, according to this record here.

Q. You sent four truckloads. How many flats would that be? Let me restate that. How many bushels would it be since your figures are in flats?

A. Figuring four to one, it would be about 1600 bushels.

Q. In January of 1957.

A. According to that figure there.

Q. In other words, you shipped 1500 bushels of avocados to California in January of '57, and so far in the fall of '57 you shipped only 2,434 bushels to California, is that correct?

A. According to those figures there.

Mr. Ferguson: You took the equivalent of one load?

Mr. Norris: I believe he testified in January of '57 he shipped—

Mr. Ferguson: You figured four truckloads amount to 1500 bushels?

The Witness: Converting on a rough basis around 1600 or 1700 bushels for four truckloads converting on a four to [fol. 230] one basis. I figured 400 to 450 bushels to a truckload—it is a rough figure.

By Mr. Norris:

Q. Did you have any shipments in January of 1957 rejected under the 8% oil content standard?

A. No, the last rejection there was on November 29, I believe that year.

Q. Mr. Kendall, do you have any explanation why in January of '55 and January of '56 you sent no avocados to California, but in January of '57 you shipped approximately 1500 bushels to California?

A. No. We made shipments to California in January of '56.

Q. How many did you ship to California in January of '56?

A. In January of '56 there were three truckloads indicated here. Two on December 30 and three in January, January 4, January 19 and January 20, and December 30, 1955.

Q. Do you know what the volume was of those shipments?

A. Five truckloads—I would estimate it would amount to 2200 bushels.

Q. In January of '56?

A. Yes.

Q. Which month of the year is this California market most attractive to you as a Florida shipper?

A. It is most attractive whenever we can move fruit out there.

Q. I am asking which month or months of the year are the [fol. 231] most attractive for you to ship in there?

A. October, November and December.

Q. Why are those months more attractive than any other month?

A. Because those are the peak months of the year for Florida avocados and the lightest months of the year for California. It is just natural that our avocados would meet a better reception in the market areas when their customary supplies of avocados are very short.

Q. Mr. Kendall, you are well acquainted with the avocado market generally throughout the country, are you not?

A. Yes, pretty well.

Q. And you keep yourself fairly well informed of the market prices of avocados in various markets throughout the country?

A. Yes.

Q. You keep yourself informed of the prices of avocados in California as well as Florida avocados being sold at the same time?

A. Yes.

Q. Excluding both Florida and California, does the California avocado or the Florida avocado generally bring a higher price per pound on the market throughout the country?

A. Well I can't really give a fair answer to that, until you raise the question as to what is in the pack being sold.

Q. Explain that answer.

[fol. 232] A. For example, a flat of California avocados might sell for \$3 and have, say, 13 pounds in them. You have 13 and a half pounds for an average of 24 or 25 cents a pound, but that flat has 20 to 24—20 to 26 fruit and has that many sales in it. That flat, taking that price for example, when it has in it 24 and costs 12½ cents and then retails for 17 cents.

Q. What do you mean by 24?

A. 24 counted fruit to the flat. In the same market a flat of Florida avocados—

Q. Were you just referring to the Florida avocados?

A. No, that was California. In the same market on a flat of Florida avocados, maybe they would sell for \$2 and a flat which has 13½ to 14 probably 15 pounds net weight, which would be a lower price per pound, but that flat has only 12 sales in that and the fruit costs 17 to 18 cent, and has to retail for a quarter or maybe 27 cents.

I think most everybody that merchandises produce or anything else will agree you make a lot more sales at 17 cents than you can or do at 25 cents, even though the fruit at 25 cents may be double that.

To a certain extent, there is a tendency to reduce the asking price of fruit of a large size. That is true not only of Florida avocados, but California avocados.

I think the records of some of the market places in the last year, for example, will show California avocados of a [fol. 233] certain size were selling at the same price per fruit. In other words, the 20 size California avocado was about the same price per flat, or pound, as the case may be, as the 20 size Florida avocado.

Q. You say this is true this year?

A. This past year.



Q. Do you think it is true of previous years?

A. I think we have already met on equal terms. You understand, we have standardized in Florida on the flat which is the same size flat as they have in California. Now, we standardized but at the same net weight. Our net weight is 13½. We pack at 13½ pounds. We standardized. We standardized 13½ net weight which was very similar to which the California avocado is packed and I think over the last year or two where they met in the market places they have tended to bring somewhat closer per fruit price, keeping in mind that our Florida avocado tend to be a good deal larger in size. In other words, we run anywhere from 14 to 20 ounces where the California avocado tend to average 6 to 12.

Q. You say when they are close the California avocados bring a higher price per pound?

A. I modified that by saying not all California avocados bring a higher price per pound than all Florida avocados. Some varieties have a heavy discount especially if they can't be classed as first grade.

[fol. 234] Q. Have you noticed any difference in prices between the comparable Florida avocado and comparable California avocado on the California market than throughout the rest of the country?

A. We haven't been given a chance to put the comparable sized fruit on the California market on time. I have a feeling that our Booth 8 avocados, that run the 20 and 24 size to the flat, would bring a very comparable price if we were allowed to market them on the market in the month of October.

Q. That is your opinion. I am asking actual market prices in California; in the example you used before you compared Florida No. 14's and California No. 24's?

A. That's right.

Q. You indicated that in marketing outside of California and Florida, the California avocado that a 24 would bring a higher price normally than a Florida 14. Would that price differential be greater in California than in the rest of the country?

A. No, not necessarily. Actually, I think that one of their difficulties this past year has been the fact that their

avocado haven't been running larger in size. In November, for example, their prices tended to come down.

Q. I ask you only as to the relative price differential between the 14 or 24, whether or not it likely would be greater in California than the rest of the country, excluding Florida.

A. It is pretty hard to measure that actually, because California ships very few comparable sized back East where [fol. 235] we could compare them with the 12 or 14 or 16 from Florida.

Q. Assuming that California is shipping the 24, and—this is the example you used previously—

A. Right.

Q. (Continuing) —you were comparing the price of the California 24 with the Florida 14 in the market outside of California and Florida. I want to take that same example and apply it to the California market and have you say whether the price differential is likely to be greater in California or in the rest of the country or less in California than the rest of the country?

A. I don't think the price differential is liable to be any greater there.

Q. I am making reference, Mr. Kendall, to Plaintiff's Exhibit No. 9 and the first 11 varieties enumerated on that page. Did you testify that they were all West Indian varieties?

A. I believe I did, yes.

Q. Now, is the marketing pattern for those West Indian varieties significantly different than the marketing pattern for the Hybrid than West Indian and Guatemalan Hybrids?

A. To a certain extent, it is.

Q. Did you tend to market more of the West Indian varieties in the home Florida market than throughout the rest of the country?

A. No, I think probably we marketed those varieties—at [fol. 236] the time we marketed those a good many of the varieties—the shipping pattern was an after effect of the Cuban avocado. We marked out certain markets. We didn't go in New York as heavily with the Pollocks and Waldins as we did in the other areas, such as Texas or possibly into the Middle West in a percentage way.

Q. Is there any difference in the ability of these West Indian varieties to withstand longer shipments than the ability of the Hybrid variety?

A. I would say on an average that our summer varieties do not keep as long as the later fall variety, but I have known of Waldin, for example, going over to Germany to the Army and we have had no complaint on them. We checked when they arrived over there.

Q. Did you fly them over?

A. We sent them up to New York by truck and reshipped by transport of some kind to Germany, and then I believe it was Brussels and reshipped around to various Army installations. We were particularly interested because we wanted to follow through on the Waldin variety and see how it had done, having been shipped that distance.

Q. Do you have any experience with the other 10 varieties comparable to that?

A. We didn't try to ship them that distance. We have shipped the Pollock to Texas and as far as the Middle West.

Q. Did you tend to have more difficulty with these shipments of West Indian variety to distant points more than other varieties?

[fol. 237] A. I could say we tend to have more difficulty, because at the time of the year when they are shipped it is hotter and they ripen a little faster.

Q. During shipment?

A. No, if it is kept under refrigeration it will hold up. But in the various market places they tend to ripen faster.

Mr. Fourn: Mr. Ferguson, I wonder if we could interrupt out of order and have this piece of paper marked next in order.

Mr. Reporter, I hand you a piece of lined paper marked at the top "California Avocado Shipments, 1955-56 Season" and ask it be marked Defendants' Exhibit "R".

By Mr. Fourn:

Q. I show you, Mr. Kendall, what has been marked Defendants' Exhibit "R" for identification and ask you to identify this document.

A. This is a lined paper entitled "California Avocado Shipments, 1955-56 Season."

I might mention that these exhibits—these pieces of paper were not prepared with the idea of having them marked as an exhibit. I originally referred to them only to refresh my memory as to the original date of shipment to California. I am not sure that they are in the proper order or that they are exactly complete. In some cases they—these are notes and they were prepared just for note purposes.

Q. Mr. Kendall, in order that there might be no mistake, would you say to the best of your knowledge that Defense [fol. 238] Exhibits "P", "Q", and "R" represent shipments made by the South Florida Growers Association from Florida to California through the years 1954 through 1957?

A. I believe that these exhibits "P", "Q", and "R", are tabulated shipments which we made to—which South Florida Growers Association, made to California during these four shipping seasons. However, as I have said before, they weren't prepared with the idea of being an exhibit. I prepared them as notes to refresh my recollection as to the original starting dates and that is all.

Mr. Ferguson: This is four seasons or three seasons?

The Witness: That is, I believe, four seasons there.

By Mr. Norris:

Q. Mr. Kendall, does the fiscal year of your corporation—when does it end?

A. We end March 31. I believe that is when the Administrative Committee's fiscal year is. Naturally, you are making the point we don't ship any fruit after March 31.

Q. So all gross receipts of your corporation for the '56 and '57 season would be reflected in the fiscal year accounting ending March 31, 1957?

A. Yes.

Q. Do you know what the gross receipts of your corporation for the fiscal year ending March 31, 1957, were?

A. I haven't the slightest idea.

Mr. Ferguson: I object to any such question.

The witness has already stated that avocados are only [fol. 239] part of his business and the entire question is irrelevant and immaterial.

Mr. Norris: Well, we consider it highly relevant and a material line of inquiry, Mr. Ferguson, and this is the first of a number of questions relating to the financial position of the South Florida Growers Association.

Mr. Ferguson: I don't think the financial condition of this corporation is within the issues of this case.

I don't think the Court would ever request the witness to answer such a question. You can put it up to the Court, but I am going to suggest to the witness he answer no such question.

Mr. Norris: Then we are going to have to put it up to the Court. Perhaps because of the long distance involved—

Mr. Ferguson: It doesn't make any difference.

Mr. Norris: This line of questioning can easily be handled by written interrogatory. We can apply to the Court for an order if this is going to be the way you insist on—

Mr. Ferguson: In the broad day light if you have any such idea, you can try it. The Court would not let you pry into the business of this corporation which is in no way involved in this case, other than to the extent to which it is involved within the issues here.

Mr. Norris: I am going to want to know the gross receipts of this corporation during the 54-55 season; 55-56 season; 56-57 season. The gross receipts of all shipments [fol. 240] from all sales of avocados in Florida—in California, correct that (referring to Reporter) during those same years.

We are going to want to know the net worth of the corporation as of March 31, 1957.

We are going to want to know the gross receipts of the South Florida Growers Association from all sales of avocados, not only the gross receipts of the sale, in California for those same years.

Now, can we stipulate that these questions were asked and the witness refused to answer on advice of counsel?

Mr. Ferguson: I certainly am mixed up. You started by putting a lot of things in here—something about the whole business of the corporation and then you injected something about avocados. As far as I can get it, what you are asking about his avocados is for dollar figures, instead of volume figures.

I don't know what you are asking now, to tell the truth. You have shifted ground and I certainly feel it is an imposition to ask this witness about the net worth of his corporation or the net results of the entire operation of the corporation and whether your question about the sales of avocados are in any way relevant. I don't know, because of the many confused statements you have made.

Mr. Norris: I will ask each question separately and then he can make it clear he is refusing to answer.

By Mr. Norris:

Q. What was the net worth of your corporation as of [fol. 241] the close of the last fiscal year, March 31, 1957?

Mr. Ferguson: We have already disposed of that one.

Mr. Norris: I am going to ask each one separately so that the record will show it clearly.

Mr. Ferguson: I am advising the witness that it is not a proper question, and that he is not called upon to answer it unless the Court so instructs him.

Mr. Norris: Can we stipulate then that the Commissioner asked the witness the questions again and that he refused to answer under the advice of counsel?

Mr. Ferguson: You can consider that done.

By Mr. Norris:

Q. What was the net worth of your corporation as of December 31, 1957?

Mr. Ferguson: Same objection.

Mr. Norris: The same stipulation?

Mr. Ferguson: Yes.

By Mr. Norris:

Q. What were the gross receipts of your corporation for the fiscal year ending March 31, 1957?

Mr. Ferguson: The same objection for the reasons previously indicated, and for another reason that the business of the corporation is not only that of handling avocados.

Mr. Norris: The same stipulation?



Mr. Ferguson: Yes.

By Mr. Norris:

Q. What were the gross receipts of your corporation [fol. 242] from all activities from April 1, 1957 to December 31, 1957?

Mr. Ferguson: The same objection. That is the same question.

Mr. Norris: It is a different kind of question, Mr. Ferguson.

Mr. Ferguson: I interpose the same objection.

Mr. Norris: With the same stipulation?

Mr. Ferguson: Yes.

By Mr. Norris:

Q. What were the gross receipts of your corporation for all activities for the fiscal year ending March 31, 1956?

Mr. Ferguson: Same objection.

Mr. Norris: Same stipulation?

Mr. Ferguson: Yes.

By Mr. Norris:

Q. What were the gross receipts of your corporation for the fiscal year ending March 31, 1955?

Mr. Ferguson: Same objection.

Mr. Norris: Same stipulation?

Mr. Ferguson: Yes.

By Mr. Norris:

Q. What were the gross receipts from the sale of all avocados by the corporation during the period April 1, 1957, to December 31, 1957?

Mr. Ferguson: The same objection. The question is irrelevant and immaterial. You may have the same stipulation [fol. 243] as to the putting of the questions to the witness.

By Mr. Norris:

Q. What were the gross receipts of your corporation from the sale of all avocados during the fiscal year ending March 31, 1957?

Mr. Ferguson: Same objection. Same stipulation.

Q. What were the gross receipts from the sale of all avocados by your corporation for the fiscal year ending March 31, 1956?

Mr. Ferguson: Same objection, and same disposition of the question.

Mr. Norris: You mean the same stipulation?

Mr. Ferguson: That is what I meant by that.

Q. What were the gross receipts from the sale of all avocados by your corporation for the fiscal year ending March 31, 1955?

Mr. Ferguson: The same objection. You have already asked him that.

Mr. Norris: I haven't asked him that specifically for that specific date.

Mr. Ferguson: Then maybe it was for a different date.

Q. What were the gross receipts from the sale of avocados in California for the period from April 1, 1957, to December 31, 1957?

Mr. Ferguson: Same objection. It is irrelevancy and immaterial.

Q. What were the gross receipts from the sale of avo-[fol. 244] cados in California by your corporation during the fiscal year ending March 31, 1957?

Mr. Ferguson: What is the difference between the two questions?

Mr. Norris: The period of time is all.

Mr. Ferguson: The same objection, with the same stipulation.

By Mr. Norris:

Q. What were the gross receipts from the sale of avocados in California by your corporation during the fiscal year ending March 31, 1956?

Mr. Ferguson: Same objection.

Mr. Norris: Same stipulation?

Mr. Ferguson: Yes.

Q. What were the gross receipts from the sale of avocados in California by your corporation during the fiscal year ending March 31, 1955?

Mr. Ferguson: Same objection.

Mr. Norris: May we have the same stipulation?

Mr. Ferguson: Yes.

Mr. Norris: No further questions.

Redirect examination.

By Mr. Ferguson:

Q. Were oil tests ever required for any purpose under the marketing agreement governing your handling of avocados?

A. No.

[fol. 245] Q. Were any oil tests ever requested by you in contemplation of a lawsuit to challenge the validity of the California oil content law?

A. No. The only reason that we had the oil tests made was to ascertain the degree of oil content of fruit which we hoped we would be able to ship to California. We were trying to find these groves and these fruits that would run the highest oil content so that we could make shipments out as early as possible.

Q. Was the Florida crop in the 1956-57 season a relatively large crop or a small crop?

A. It was a lighter crop than the previous year and lighter than this year.

Q. Were there some conditions of weather which adversely affected the crop?

A. Yes, we had a freeze on January 15 or 16, 1956, which affected the size of our crop, reducing it by around 25% of the previous year, and probably about the same amount compared with this year, so it was at least 25% less in the volume of crop than the previous year or the succeeding year.

Q. Were there any other weather conditions that affected that crop?

A. Some of our crops had storm damage. For instance, Mr. Krome had 1600 trees uprooted in that particular storm that occurred in March of that year, which reduced the expected volume of the crop.

[fol. 246] Q. Were there any special conditions with respect to pests?

A. I believe it was in the spring of 1956 that the Mediterranean fruit fly was discovered in Florida, and that affected our distribution pattern somewhat, I believe.

Q. When you make a shipment of avocados to California, which is rejected, what can you do, if anything, to recondition the load?

A. Frankly, sir, I don't know just what procedure is followed to recondition the load. We are really perplexed as to what it is that makes an 8% oil content avocado go bad. It is very difficult to even guess as to the external characteristics of avocados, whether it is a Lula or a Booth 8. I don't know what a person in California could do to recondition our shipments.

Q. In such cases, do you have available in California other Florida avocados to substitute for avocados in the rejected loads?

A. No. I consider that at all times we have been very conservative in our shipments of fruit to California, because we haven't wanted too much fruit rolling at any one time, so that it would run into the difficulty of being rejected and then having to get it on to these other markets. When you get three or four trucks of avocados rolling at the same time, there is that possibility and naturally we worry until they arrive and are accepted.

Q. You have had experience in California as well as in Florida. From your experience and general knowledge of marketing conditions, what would you say is the relative [fol. 247] position of the California market in avocados as compared with the rest of the country?

A. The demand for avocados in toto is considerably greater in California than it is in many other parts of the country. I would say that is probably due to the fact that the people out there probably use more salads and use more avocados in general than they do in other parts of the country.

Q. Is there a Mexican influence?

A. Yes. Just as we found in New York City, one of our biggest demands for avocados comes from the pushcart area of Harlem. The original demand in California for avocados started with the Mexican influence, and I believe that it has continued.

Q. Under the Federal regulations governing maturity of Florida avocados, is there a percentage of tolerance in the weight or size standards?

A. I believe there is. I am not sure as to the percentage. It may be 5%, but I am not exactly sure what that percentage is. I believe there is a small tolerance.

Recross examination.

By Mr. Fourn:

Q. During the year 1957-58 marketing season, as it is known in Florida, what months during that period were the most attractive for the marketing of Florida avocados in California?

Mr. Ferguson: You have already asked him that same question, precisely that same question.

A. I think my answer to that question before was that [fol. 248] the months of October and November and December would be the most attractive because that is the peak of our shipping season for Florida avocados.

Mr. Fourn: May it be stipulated by and between plaintiffs of record in this action and the defendants, Jacobsen, Knight and Brown, that if the same questions propounded by Mr. Norris to Mr. Kendall were asked by the defendants just named, that in response to each question Mr. Kendall declined to answer on the advice of counsel, and that the Commissioner then directed the witness to answer

the question, and the witness declined to answer such questions on the advice of counsel?

Mr. Ferguson: It is so stipulated.

Mr. Fourn: Thank you.

And further deponent saith not.

[fol. 249] FRED PIOWATY a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ferguson:

Q. Your name is Mr. Fred Piowaty?

A. Yes.

Q. Where do you live, Mr. Piowaty?

A. Coral Gables, Florida.

Q. Where is your place of business?

A. Princeton, Florida.

Q. What is your business?

A. Packing, shipping and selling limes, avocados, mangos, tomatoes and potatoes.

Q. Are you an officer of Florida Lime and Avocado Growers, Inc.?

A. Yes, sir.

Q. And what is your office in that corporation?

A. Secretary.

Q. Are you active in the management?

A. I am the sales manager.

Q. When was the corporation organized?

A. 1956.

Q. Did it then succeed a prior business?

A. It succeeded a cooperative.

[fol. 250] Q. Of the same name?

A. Not the same name, but the same nature of business.

Q. How long did it operate?

A. Since 1939.

Q. Were you active in that business at all times since 1939?



A. No, sir; only since 1943.

Q. That was the beginning of your activity in the avocado industry of Florida?

A. Yes.

Q. What did you do prior to that; what was your prior business?

A. I was in the purchasing business, operating out of Chicago. I was in the jobbing end of it and also in the buying end of it on the road, from 1934.

Q. Is the business of Florida Lime and Avocado Growers, Inc., that of growing avocados?

A. Yes.

Q. To what extent?

A. We maintain a complete grove maintenance setup for growers, besides owning some groves, handling the care and maintenance all the way from planting through to harvesting.

Q. Do you operate groves completely for others?

A. We do.

Q. Does the company own any groves?

A. We own two groves at the present time.

[fol. 251] Q. What acreage?

A. 40 acres.

Q. You refer to avocado groves?

A. Yes.

Q. And what does the corporation operate in the way of avocado groves as lessee?

A. About 125 acres.

Q. Did your company make a shipment of avocados to California on November 15, 1957?

A. Yes.

Q. Was this load of avocados inspected by the Federal-State Inspection Service of Florida?

A. Yes.

Q. Where was that inspection made?

A. In our packing house.

Q. After that inspection did you receive an inspection certificate?

A. Yes.

Q. I show you an inspection certificate marked Plaintiffs' Exhibit 3 for identification. Did you receive this particular copy?

A. I received a copy of this particular inspection certificate.

Q. Do you know what happened to that copy?

A. This went with the truck to California, I believe.

[fol. 252] Q. And did I bring it back to you from Los Angeles, California?

A. You did, sir.

Q. Mr. Piowaty, have you prepared a summarized statement from the accounting records of your corporation of the volume of avocados sold by your corporation in the 1954-55 and subsequent selling seasons?

A. Yes.

Mr. Ferguson: Mr. Reporter, please mark this page as Plaintiffs' Exhibit 20 for identification.

(Off-the-record discussion.)

Mr. Ferguson: During the off-the-record discussion the witness suggested an amendment to the answer to state that the seasons covered 1955-56 and subsequent seasons.

Q. Do you keep a record of sales by states?

A. Yes, sir.

Q. Is that a ledger record?

A. Yes.

Q. Is that available here at this hearing?

A. Yes.

Q. In what states did your company make sales of avocados in the years since 1954?

A. Practically every state in the Union. I won't say every state in the Union, because I didn't make any in Vermont that I know of. We probably did have some go [fol. 253], through there from Boston, but not any sent directly there from Florida.

Q. Does this statement show truly the volume of sales of avocados by your company in the three seasons here listed, beginning 1955-56, including the present uncompleted season?

A. Yes, to January 10 of this year.

Q. Does it also show distribution of sales in the three classifications "Sales in Florida", "Sales in California" and "Sales in Other States"?

A. It does.

Q. Does this truly reflect the data in the books and records of your company of the sales?

A. Yes, sir.

Mr. Ferguson: This statement will be offered in evidence as Plaintiffs' Exhibit 20.

Q. Are all of the avocados sold by your company grown in South Florida?

A. Yes, sir.

Q. Are they all marketed under the Federal Marketing Agreement No. 121?

A. Yes.

Q. Did your company make shipments of avocados to California in the four seasons, beginning 1954-1955?

A. Yes.

Q. Is there any reason why the 1954-55 sales are not included in this tabulation marked Plaintiffs' Exhibit 20 for [fol. 254] identification?

A. Primarily, because of the fact that the total volume of sales was rather difficult to pick up, and it would take a lot more work. The California sales would not be hard to find, but the total sales for a particular season would be hard to find.

Q. I think part of my question was whether your company made shipments of avocados to California in each of the four seasons.

A. Yes.

Q. Prior to the time of these shipments, did you obtain oil content tests of avocados by the University of Florida Subtropical Experiment Station at Homestead?

A. Prior to shipping to California?

Q. Yes.

A. No, if I understand the question correctly.

Mr. Ferguson: Will the Reporter repeat the question?

(Preceding question read by the Reporter, as above recorded.)

A. Does your question mean prior to our shipping to California?

Q. Yes.

A. Yes, we took tests.

Q. I direct your attention to an exhibit marked Plaintiffs' Exhibit 12 for identification and ask you to examine the list of oil tests which appear in that exhibit, and tell us, if you can, whether these oil tests were made on application of your company?

A. They were.

[fol. 255] Q. Why did you procure these oil tests?

A. For the purpose of seeing if the avocados were running high enough so that we could take a chance on shipping them to California.

Q. Did you in any instance procure an oil test of avocados for any other purpose?

A. No.

Q. Were some of your shipments of avocados to California barred from sale in that state?

A. Yes.

Q. Have you prepared a summarized statement from the books and records of your company of the transactions in which avocados shipped to California were barred from sale in that state?

A. Yes, sir.

Mr. Ferguson: Will the Reporter please mark this statement, consisting of two pages, entitled, "Florida Line and Avocado Growers, Inc.—Avocado Shipments Barred from Sale in California", as Plaintiffs' Exhibit No. 21 for identification.

Q. Do you have with you here a complete file of your company on the five transactions listed in Plaintiffs' Exhibit 21 for identification?

A. Yes.

Q. Does that include a document showing the sale of the avocados in each instance?

A. Yes.

[fol. 256] Q. Together with the bill of lading?

A. Yes.

Q. And a statement of account received from the California customer?

A. Yes.

Q. With notification of the rejection of all or part of a load, and a reason for the rejection?

A. Yes.

Q. Does it include in each instance a copy of the certificate of inspection received by you from the Federal State Inspection Service in Florida?

A. All but the one of December 8. I was unable to get that from Orlando.

Q. Did you find whether or not you had copies of the certificates in your company files?

A. No. I had to secure copies from Orlando.

Q. You secured copies of the certificates of inspection from Orlando?

A. Yes.

Q. Based on the files and books of account of your company, is this statement of transactions, Plaintiffs' Exhibit 21 for identification, true and correct?

A. Yes.

Mr. Ferguson: This statement will be offered in evidence as Plaintiffs' Exhibit 21.

[fol. 257] Q. To whom was the last of these shipments made?

A. To Felix Cohen and Son, Oakland, California, and Williams and Son Produce Company, Los Angeles.

Q. Was it divided between them?

A. It was a divided shipment, yes.

Q. Are these commission houses in California?

A. Yes, sir.

Q. Where is Williams and Son located?

A. In Los Angeles.

Q. And where is Felix Cohen and Son located?

A. Oakland, California.

Q. How many boxes were there in their shipments?

A. 1874.

Q. Can you say what that means?

A. It means 1874 lugs of avocados, running thirteen and a half pounds net minimum.

Q. Generally, Mr. Piowaty, is there a relationship between the size of the truckload and the distance of the shipment?

A. No.

Q. The question is whether there is a difference in the case of shipments to remote points and shipments to close points?

A. To remote points we would necessarily ship full-loads, whereas to a close-in point, you don't ship a full load; in other words, you make partial shipments.

Q. Do you know what part of this particular load was [fol. 258] unloaded at Los Angeles?

A. 900 lugs.

Q. What happened to the balance of the load?

A. 974 lugs went to Oakland, California.

Q. Your statement indicates, does it not, what happened to the 900 lugs of avocados that were rejected in Los Angeles?

A. Yes. 361 of them were rejected because of oil.

Q. And this statement shows the disposition of those 361 lugs?

A. Yes.

Mr. Ferguson: Will the Reporter mark this notice of Standardization Violation Report issued by the Los Angeles County Agricultural Commissioner, Standardization Division, as Plaintiffs' Exhibit 22 for identification.

Q. Was this copy of notice, Plaintiffs' Exhibit 22 for identification, procured for you by your consignee in Los Angeles?

A. Yes.

Q. Does it contain a memorandum of the results of the oil test of these avocados?

A. Yes.

Mr. Ferguson: This notice will be offered in evidence as Plaintiffs' Exhibit 22.

Q. Did the 900 boxes unloaded at Los Angeles contain avocados of different sizes?

A. Yes.

[fol. 259] Q. What sizes?

A. 10's, 12's, 14's, 16's and 18's.

Q. I think it has already been explained that that means the number of avocados in a box?

A. Yes.



Q. Does this notice indicate that a separate test of oil content was made as to the 14's, 18's and 16's?

A. Yes, it does.

Q. The 12's are not mentioned in this notice, are they?

A. That is right.

Q. Were the 12's and 14's sold in Los Angeles?

A. Yes, and one box of 10's.

Q. There was one box of 10's?

A. Yes.

Q. And the 16's and 18's were sold where?

A. Phoenix, Arizona.

Q. What about the balance of the load?

A. 974 boxes went to Oakland.

Q. Were they sold in California?

A. Yes.

Q. When you made your shipments of avocados to California in November, 1955, what was your understanding or expectation as to the manner in which the avocados would be tested for oil content, that is to say, as to the technical method as to whether they would be tested individually or by composite sample?

[fol. 260] A. In the 1954-55 year they were all tested as a composite deal.

Q. That was your understanding?

A. That was my understanding as of that time. In 1955-56 they took individual tests.

Q. And you had not anticipated that?

A. No.

Q. Were all of the tests procured by you, at the Experiment Station, tests of a composite sample?

A. That is right.

Mr. Ferguson: You may cross-examine.

Cross-examination.

By Mr. Fourt:

Q. Mr. Piowaty, am I pronouncing your name correctly?

A. Well, if it would make it easier for you or if it would make you happier, you can just call me Fred.

Q. When did your corporation build its present packing house in Florida?

A. The packing house was built in 1951. The one before that burned down.

Q. Where is the packing house located?

A. Princeton, Florida.

Q. How long has Florida Lime and Avocado Growers, Inc. been marketing avocados in California?

A. I think since 1954. It may have been in 1953, but I [fol. 261] don't know exactly.

Q. Did your predecessor Cooperative corporation market any avocados in California?

A. That was the predecessor.

Q. When did Florida Lime and Avocado Growers, Inc. become formed or organized?

A. It was originally organized as a cooperative in 1939, and we changed to our present corporation in 1956, therefore, you will have to differentiate as to which company you are asking about.

Q. Then it would have been the Cooperative which would have marketed avocados in California in 1953 to the time of the organization of the present corporation in 1956?

A. Yes.

Q. I show you Plaintiffs' Exhibit 20 for identification and ask you if you can supply the defendants with a figure as to sales in Florida for the year 1954-55?

A. It would be rather difficult to do that. I don't know whether I can do that or not.

Q. Would it be possible for you to obtain the sales in California by Florida Lime and Avocados Growers, Inc. for 1954-55?

A. Yes.

Q. Would it be possible for you to obtain the sales in other states for that year?

A. Yes, I can get that.

[fol. 262] Mr. Fourn: Mr. Ferguson, would it be possible to stipulate that a new exhibit exactly like Plaintiffs' Exhibit 20 for identification be filed with a new number, and that said exhibit contain these other figures?

Mr. Ferguson: It may be stipulated that an exhibit to be numbered Plaintiffs' Exhibit 23 will be prepared showing

total sales for the season 1954-55, and sales in California during that season.

By Mr. Fourn:

Q. Mr. Piowaty, would it be possible to obtain the total volume of sales in California for the season 1953-54?

A. No.

Q. The reason for that is that the records are in such a shape that you can't extract such information?

A. That is right.

Q. Is it true that there are three principal handlers by volume which market Florida avocados in California?

A. I don't know. I only know of two. There probably may be five.

Q. The two of which you are aware are the plaintiffs in this case?

A. That is right.

Q. Mr. Piowaty, may I see the supporting documents for these five transactions listed in Plaintiffs' Exhibit 21 for identification?

[fol. 263] Mr. Ferguson: Mr. Reporter, please note in the record that the witness has handed documents to counsel in response to his request.

By Mr. Fourn:

Q. Do you have a copy of Plaintiffs' Exhibit 21 for identification in front of you?

A. Yes.

Q. Directing your attention to Plaintiffs' Exhibit 21 for identification, with particular reference to the top paragraph which reads, "November 10, 1955", could you tell us why Salt Lake City was selected as the market for the lot after it was rejected in California?

A. Yes.

Q. Why was Salt Lake City selected?

A. It wasn't too far away from Oakland, California.

Q. I show you one of the supporting documents and ask you if E. O. Muir did not write you concerning this shipment and state that the sizes in the lot were not the right sizes for Salt Lake City?

A. That is right.

Q. Isn't it true then that there were other adjacent markets which would have been a better destination for this reconsigned lot?

A. No.

Mr. Ferguson: It wasn't consigned, in the first place; it was a direct sale to Safeway Stores in the first instance. [fol. 264] Q. From Oakland it was reshipped rather than reconsigned to Salt Lake City?

A. That is right.

Q. With respect to the five shipments shown on Plaintiffs' Exhibit 21 for identification, were each of the five shipments consigned to consignees on the West Coast?

A. No, sir.

Q. Were one or more or can you identify any of them that were consigned to consignees on the West Coast?

A. Two of them were; the one on December 8, 1955, and the one on November 18, 1957.

Q. And those two shipments appear on page 2 of Plaintiffs' Exhibit 21 for identification?

A. Yes.

Q. With respect to the item of loss on page 1 of Plaintiffs' Exhibit 21, dated November 10, 1955, the figure being \$1,377.05—isn't it a fact that that figure means that it was arrived at by subtracting it from the gross sales which you would have realized had this lot not been rejected in California?

A. No.

Q. Just what does that figure represent?

A. A definite loss.

Q. At this time is it possible for you to state your actual net gain or loss on that shipment, not with respect to potential profit or total receipts, but as to the actual net [fol. 265] gain or loss to Florida Lime and Avocado Growers, Inc. on that shipment?

A. The actual net loss to Florida Lime and Avocado Growers, Inc. on that shipment was \$1,377.05.

Q. Do you know the actual cost to Florida Lime and Avocado Growers, Inc. of placing that shipment of 1129 lugs in Safeway Stores, including all costs?

A. Yes.

Q. How much was that cost?

A. \$2,088.65.

Q. Isn't it true that the figure you just stated a moment ago would also have been your contract sales price had the sale been effected in California?

A. That is right.

Q. I direct your attention to Plaintiffs' Exhibit 21 for identification, with specific reference to November 12, 1955, the figure there appearing being listed as \$2,170.54.

A. That is right.

Q. Was that figure calculated by subtracting your actual receipts on that shipment from the contract sum that you would have received had the lot been accepted in California?

A. Correct.

Q. What were the total costs to Florida Lime and Avocado Growers, Inc. in placing that shipment in Oakland, California?

A. \$3,853.55.

Q. Is it true that the latter figure you stated also represented the sales price which would have been effected had the sale been consummated?

A. That is right.

Q. Directing your attention to the entry of November 14, 1955, on Plaintiffs' Exhibit 21 for identification, being the figure of \$2,296.60, which is noted as a loss, isn't that calculated by subtracting your actual receipts from the marketing of this lot from the potential receipts you would have received had the sale been consummated in California?

A. Right.

Q. What was the total cost to Florida Lime and Avocado Growers, Inc. in placing that lot of avocados in Oakland, California?

A. \$4,084.80.

Q. Does this latter figure represent the sales price which you would have received had the sale been consummated?

A. That is right.

Q. Directing your attention to Plaintiffs' Exhibit 21 for identification, page 2 thereof, with particular reference to the shipment dated December 8, 1955—was the item denoted loss with the figures \$1,651.82 calculated by subtracting the actual receipts from the sale of that lot from the figure which the corporation would have received had the sale been consummated in California?

A. That sale was a consignment, and that figure of \$2,200 [fol. 267] is based on the market at the time the shipment arrived.

Q. The figure of \$2,200 is not the contract price?

A. No.

Q. Is it true that you had no contractual arrangement with a buyer in California which would have guaranteed to you the price of \$2,200, had that lot been sold in California?

A. We had assurance of that, but we had no contract.

Q. The assurance was given to you by your consignee in California?

A. By my representative in California with respect to this particular transaction.

Q. Was the price quoted there "\$2 per lug" and "\$4 per bruce" based upon market quotations appearing in some state or Federal Price Quotation?

A. No.

Q. How did you arrive at these figures?

A. In a telephone conversation with a receiver as to what the market was and what he was selling them for at that particular time.

Q. I direct your attention now to Plaintiffs' Exhibit 12 for identification. Did you personally deliver the samples shown on the first page of Plaintiffs' Exhibit 12 for identification to the Experiment Station at Homestead, Florida?

A. No.

Q. Did you personally pick the samples which are indicated on page 1 of Plaintiffs' Exhibit 12 under the heading "Size of Sample"?

A. No.

Q. With respect to pages 2, 3 and 4 of Plaintiffs' Exhibit 12 for identification, which refer to the 1956-57 season, the 1955-56 season and the 1954-55 season, did you personally deliver any of the samples tabulated on these pages to the Experiment Station at Homestead?

A. No.

Q. Did you personally deliver any of the samples tabulated on these three pages to the Experiment Station at Homestead?



A. No.

Q. Out of an abundance of precaution, Mr. Piowaty, did you personally deliver any of the samples which are tabulated on any of the four pages comprising Plaintiffs' Exhibit 12 for identification to the Homestead Experiment Station?

A. No.

Q. Did you personally pick any of the samples from trees as shown on the four pages of Plaintiffs' Exhibit 12 for identification?

A. No.

Q. Directing your attention to Plaintiffs' Exhibit 21 for identification, with particular reference to the shipments dated November 10, 1955, November 12, 1955, and November 14, 1955, had you given any specific instructions to the [fol. 269] consignees of these shipments with respect to reconditioning the lots in the event of their rejection or the rejection of parts of these lots by the State of California?

A. From others I have found out that there is no profitable way to recondition Florida avocados.

Q. And is it true that your answer would be no for that reason?

A. Yes.

Q. Directing your attention to Plaintiffs' Exhibit 21 for identification, with particular reference to the date of November 10, 1955, will you convert the figure "1129 lugs" into bushels?

A. Could I?

Q. Yes.

A. That would be simply a mathematical calculation.

Q. Then the answer would be that it is just a mathematical calculation?

A. Yes.

Q. Could the same mathematical calculation be applied to the other figures shown on the same exhibit for the number of lugs shipped on the dates of November 12, 1955 and November 14, 1955?

A. Yes.

Q. Directing your attention to page 2 of Plaintiffs' Ex-

hibit 21 for identification, would the same conversion figure apply?

A. Yes, the same conversion figure would apply on the lugs.

[fol. 270] Q. Does the conversion figure of 3.6 apply to the 700 lugs shipped on December 8, 1955 and to the 1874 lugs shipped on November 15, 1957?

A. The conversion applies to the lugs, yes.

Q. The conversion figure would translate the lugs to bushels?

A. Yes.

Q. Would the conversion figure for the "200 bruce" boxes shipped on December 8, 1955, as shown on this same exhibit, apply?

A. A "bruce box" is four-fifths of a whole. You would divide it by five and multiply it by four, which would be 160 bushels for the 200 bruce figure.

Q. Directing your attention to Plaintiffs' Exhibit 20 for identification, do you have with you the supporting data from which these tabulations were made?

A. I have with me the supporting data for 1955-56.

Q. May we see that document, please?

(Hands document to counsel.)

Mr. Ferguson: Let the record indicate that the witness has handed a ledger book to counsel.

[fol. 271]

By Mr. Fourt:

Q. Mr. Piowaty, would you prepare the tabulation showing the date of shipment to California of the amount of lugs shipped or bushels, depending on your appropriate figures shown in your books, the figures of gross sales for the years or shipping seasons 1954-55; '55-56; '56-57; '57-58 to date, or the most recent convenient date depending on the records?

A. To California only?

Q. Shipments destined for California. In Plaintiffs' Exhibit 20 it shows January 10, 1958. Would your tabulation include shipments up and including January 10, 1958?

A. Yes.

Mr. Ferguson: Since we are giving you the sales in California for '54-55, there would be nothing added by this Plaintiffs' Exhibit 23, except as to the total sales in '54.

Mr. Fourt: That is correct. If the same figures are available, there should be no extra effort in including them.

Mr. Ferguson: Let's put it this way. We can forget about Plaintiffs' Exhibit 23, it is only one figure.

You have your shipments to California by date, and amounts in each season, and all of the shipments at the bottom of that exhibit, total sales 1954-55 and the figure.

Mr. Fourt: That will be satisfactory.

Mr. Ferguson: Are you just asking for them on these California shipments as to date and amount of shipments? There was something said before about preparing an exhibit to be numbered Plaintiffs' Exhibit 23. I am going to ask you to delete that.

Mr. Norris: Mr. Ferguson, I believe that probably did include some information this would not. That is the total volume of sales in all states for the years '54-55 and '53-54.

The Witness: I didn't get it. The '53-54 I said I couldn't.

Mr. Ferguson: He said he couldn't give you a total in Florida, but he could give you one in California.

The Notary: The proposed exhibit will be marked, when it is presented, Defendants' Exhibit "S" for identification.

(Thereupon, an off-the-record discussion was had.)

Mr. Fourt: It is stipulated between the defendants and plaintiffs that each of the questions posed by Mr. Norris to Mr. Kendall to which Mr. Kendall refused to answer may be deemed to have been directed to Mr. Piowaty by myself and that in each case Mr. Piowaty declined to answer on advice of counsel, and that the Commissioner in each case directed the witness to answer the questions. He still declined on the advice of counsel.

Mr. Ferguson: I would suggest that you state that the questions were put to Mr. Kendall with reference to one corporation and the questions would be put to Mr. Piowaty with respect to the Florida Lime and Avocado Growers Association.

Mr. Fourt: Our two stipulations will constitute one

stipulation regarding this matter of posing of the questions and refusal to answer.

[fol. 273] Mr. Ferguson: It is so stipulated.

Mr. Fourn: May the stipulation be extended to that question posed by Mr. William Norris to Mr. Piowaty in the same manner as the stipulation refers to the questions posed by myself?

Mr. Ferguson: Yes.

By Mr. Fourn:

Q. Mr. Piowaty, I should like to direct your attention to Plaintiffs' Exhibit 21 for identification and ask you if the five shipments shown on that exhibit, dated from November 10, 1955, to November 15, 1957, constitute all of the shipments from the Florida Lime and Avocado Growers shipped to California which were rejected at their inspection at California between the dates I just mentioned?

A. November 10, 1955, to November 15, 1957, no, they do not.

By Mr. Norris:

Q. I believe you testified that Florida Lime and Avocado Growers first shipped avocados to California in the '53-54 season?

A. I think so. I know in '54-55—I'm not positive about '53-54.

Q. I see. If any shipments were made during the '53-54 season, were they made without your having previously requested the Homestead Experiment Station to run oil tests on the fruit?

A. If I didn't request an oil content test, they weren't shipped to California. That can answer your question.

Mr. Norris: That is all the questions I have.

By Mr. Fourn:

Q. At any time since either the present corporation, the [fol. 274] Florida Lime and Avocado Growers, or the preceding cooperative corporation has been shipping and marketing Florida avocados in California, has either of

those two organizations maintained oil testing equipment at your packing house?

A. No.

Mr. Fourn: No further questions.

Redirect examination.

By Mr. Ferguson:

Q. Mr. Piowaty, you just stated that Plaintiffs' Exhibit No. 21 does not include all shipments of avocados made by your company to California which were rejected upon oil test. Why does this exhibit fail to include any other rejected shipments?

A. We had quite a few more shipments rejected in California than these show. We went back to try to dig them out accurately and they are too hard to identify. Rather than include an inaccurate statement they weren't included in the record. They are still too hard to identify, so they weren't included.

Q. Was there something in the accounting record which indicated whether or not there were additional rejected shipments?

A. Oh, yes. The losses were around \$21,000 not just the seven we have for a total.

Q. Do you think it would total \$7500?

A. No, it was far greater than that, but I figured that was enough to establish—

Q. You could not definitely identify the other shipments?  
[fol. 275] A. That is right.

Mr. Ferguson: That is all.

Recross examination.

By Mr. Fourn:

Q. Mr. Piowaty, is this figure of \$21,000 an estimate?

A. No, that figure is not an estimate.

Q. Well, is it true and accurate to dollars and cents?

A. No.

Q. So to that extent—

A. It is an estimate.

Q. Would you state it is approximately accurate?

A. I would say it is approximately accurate.

Q. Would you say the approximate figure was calculated in the same manner as were your shipments you labeled as losses on Plaintiffs' Exhibit 21 for identification?

A. No.

Mr. Fourn: No further questions.

Mr. Ferguson: That's all.

(Thereupon, at 11:30 p.m. the deposition was adjourned until the following day.)

[fol. 277] R. M. WIMBISH a witness on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fourn:

Q. What is your name, sir?

A. My name is R. M. Wimbish.

Q. And your address?

[fol. 278] A. My post office address and business mailing address is Box 1148, Homestead, Florida.

Q. What is your occupation or profession?

A. My occupation and profession at the present time is that I am supervising inspector of fruits and vegetables of both the Federal and State Agricultural Inspection Service in the Homestead district. The territory embraces South Miami south to Florida City, inclusive.

Q. And the name of your immediate superior, sir?

A. My immediate superior, which probably would not be clear to you, sir, would be my regional supervisor, however, I am directly responsible for all activities to Mr. Frank Phelan, who is located at Box 307, Belle Glade, Florida.

Q. What is the position or occupation of Mr. Phelan?

A. He is the regional supervisor for the Federal-State Inspection Service. Would you like to have the district that he is in charge of?



Q. From what source do you receive your salary?

A. Our salary comes directly from the Department of Agriculture in Tallahassee, Florida.

Q. Would that be the Florida Department of Agriculture?

A. Yes, but it is called the Federal-State Inspection Service. We are paid through the Department of Agriculture of the State of Florida, however.

Q. Do you have a license issued by the United States [fol. 279] Department of Agriculture?

A. I do.

Q. What is the nature of that license?

A. Well, I will offer that as an exhibit (produces card).

Q. Sir, would you describe this license as it pertains to you?

Mr. Ferguson: Do you want him to read it?

The Witness: The license is self-explanatory, sir. It is issued out of Washington by the United States Department of Agriculture, and it is renewed each year.

Mr. Ferguson: Just read it into the record.

Mr. Fourn: I am reading from license number E-6672, a license which expires June 30, 1958, issued by the United States Department of Agriculture, Agricultural Marketing Service, dated July 1, 1957, which provides that R. M. Wimbish is licensed under the regulations issued pursuant to the Agricultural Marketing Act of 1946 to perform the services indicated on the back of this card. On the back of the card appears this language:

"The above licensee is authorized to inspect and certify to the quality and condition of citrus, limes, potatoes, tomatoes and avocados."

It has a further notation: "For supervisory work."

By Mr. Fourn:

Q. During the calendar year of 1957, what were the busiest months with respect to your inspection service of avocados in your district?

[fol. 280] A. The busiest months?

Q. Yes.

A. I would say October, November and December.

Q. With respect to avocados, what are your duties?

A. Well, my duties as supervising inspector is to see that the inspectors working under my supervision carry out their job as inspectors in the particular houses where they are assigned for duty.

It is also my job to interpret any grades or anything involving grades, whether it be under committee regulations or anything else. In the event that the inspector has trouble in a packinghouse in interpreting the grades, it is my job to cooperate with him and see that he carries out his duties as a licensed inspector.

Q. Is there any particular rule or regulation under which your inspectors work or are guided by?

A. I don't quite understand that question.

Q. With respect to avocados, Mr. Wimbish, is there a particular governmental regulation which it is your duty to enforce?

A. It is my duty to enforce grade standards under this Federal Marketing Agreement, and it is the duty of the inspector to see that the applicant complies with these regulations.

Q. I hand you defendants' exhibit "N" for identification, and ask you to examine that document?

[fol. 281] A. This document that I now hold is the Avocado Administrative Committee rules and regulations governing the shipment of avocados and the grading thereof.

Q. I now hand you defendants' exhibit "M" for identification, and ask you to identify that document?

A. I am familiar with this document. This is a recap of the effective rules and regulations issued pursuant to the order regulating the handling of avocados grown in South Florida, issued by the Avocado Administrative Committee.

Q. Do defendants' exhibits "N" and "M" constitute the governmental regulations which you enforce with respect to avocados?

A. I don't quite understand that, sir.

Q. I will rephrase the question.

A. These two documents that you just showed me are the grade regulations and a recap of the effective rules and regulations, and these are what the applicants have to

comply with under the regulations and orders of the Avocado Administrative Committee, and it is the Inspection Service's duty to see that they are complied with.

Q. These two documents, defendants' exhibits "M" and "N" are the regulations which you and your inspectors enforce with respect to avocados?

A. That is right.

Q. During the months of October, November and December, 1957 how many inspectors and assistants to you [fol. 282] did you employ with respect to avocado inspection only?

A. Well, sir, during the avocado season I work myself as an inspector; however, we did have seven men, not including myself, working on avocados in this district.

Q. Does the South Florida Growers Association, Inc. operate an avocado packinghouse in your district?

A. Yes, sir.

Q. Do you know the name of the president or the leading officer or managing officer of that corporation?

A. Yes, I do.

Q. What is his name?

A. Mr. Harold E. Kendall.

Q. Is Mr. Kendall in the room at the present time?

A. Yes, sir.

Q. Where is his packinghouse located?

A. It is located just south of Goulds, Florida, on the west side of Highway No. 1, U.S. No. 1.

Q. Are you acquainted with its approximate scope of operations during the avocado harvesting season?

A. Yes. That is one of the primary things that an inspector should know, that is, to understand the operations in a packinghouse; in other words, that is a necessary requisite.

Q. During what period of time during the year 1957 did the operation of the South Florida Growers Association packinghouse reach its maximum capacity?

[fol. 283] A. That is a question that I couldn't answer. We do not keep a record as to the operation of a packinghouse. We only serve them with an inspector, and of course we certify to all fruit that goes out of there that is shipped intra or interstate. I wouldn't have those records here. The

only way I could actually acquire those records would be through our office in Orlando.

Q. Does the Federal-State Inspection Service maintain inspection service for Florida Lime and Avocado Growers, Inc. at Goulds?

A. Yes, we do.

Q. So far as your inspection service is concerned, sir, when and during what period of time is the maximum inspection service required?

A. It is a continuous inspection. He is there all of the time that they are operating.

Q. Is there an increased demand for inspection service during any particular part of the year?

A. I would say that as the season dwindles down we don't have as many inspections. Are you speaking now of the district as a whole or of this particular packinghouse?

Q. This one.

A. There is no need for increasing the inspectors in that packinghouse at any time. One man can handle the entire situation during the operation.

Q. During the peak of the avocado season, with particular reference to 1957, could you estimate how many truckloads of avocados are processed and shipped from the Goulds packinghouse by the South Florida Growers Association, Inc.?

A. I wouldn't have the slightest idea. We have no record of where the trucks go or who they go to. We would have no way of knowing whether they were going intrastate or interstate, because they sell a lot locally, and also sell a lot out of the state. Where it ultimately goes we have no information on that, and it is not our desire to have such information, and it is not necessary in the pursuance of our duties.

Q. I direct your attention to defendants' exhibits "M" and "N" for identification, and ask you, sir, if any other written instructions, other than these two documents, are handed to your inspectors for use in the South Florida Growers Association packinghouse at Goulds, Florida?

A. For the inspection of avocados?

Q. Yes.

A. Yes, we sure do have another document. I think I

have one available here, which is absolutely necessary in the performance of our duties with respect to maturity of Florida avocados.

Q. I show you plaintiffs' exhibit 9 for identification, sir, and ask you if you can identify that document?

A. I am quite familiar with it.

Q. Would you identify it or describe it for the record?

A. This document I hold in my hand is the avocado shipping [fol. 285] ping dates issued by the Avocado Administrative Committee, which presumably controls the shipment of avocados as to maturity. The particular avocados listed on this instrument have shipping dates, weight and minimum diameters at specified dates. It is the duty of the inspector to see that the avocados under these particular varieties coincide with the shipping dates, weight, and measurement.

Q. And your testimony at this moment is with reference to plaintiffs' exhibit 9 for identification?

A. Yes. This is the maturity schedule put out by the Avocado Administrative Committee.

Q. And your testimony of a moment ago referred to this document which is marked plaintiffs' exhibit 9 for identification?

Mr. Ferguson: He just said so; he said it twice. There is no question about that.

Mr. Fourn: Will you stipulate that his testimony of just a moment ago with reference to shipping date schedule, was with reference to plaintiffs' exhibit 9 which he held in his hand at that time?

Mr. Ferguson: Certainly.

By Mr. Fourn:

Q. I now hand you defendants' exhibits "M" and "N" and plaintiffs' exhibit 9, all for identification, and ask you if these three documents constitute the only written instructions which were given to your inspectors to inspect fruit at the South Florida Growers Association packinghouse at [fol. 286] Goulds, Florida during the avocado season of 1957?

Mr. Ferguson: I think it already appears that this is a summary made of all of the maturity regulations that were issued during the season. It is admitted in the pleadings that there was a series of prior orders and regulations, each fixing dates for shipment of certain fruits. Plaintiffs' exhibit 9 for identification is a summary of all regulations issued in the course of the season. The question here is misleading, because it does not include the fact that the inspectors have partial lists all through the season.

Mr. Fourn: Will the reporter read to the witness my last question?

(Preceding question read by the reporter as above recorded.)

The Witness: That question, sir, I couldn't answer in that form, because these regulations from time to time are subject to change at the direction of the Avocado Administrative Committee. Whenever they do change them, Mr. Biggar, the manager of the Avocado Administrative Committee, immediately furnishes the inspection service with copies of the effective rules and changes. There are times when they change them, and when they change them I am the first man to get the changed regulations, because I have to see that the inspectors get the revised regulations issued by the Avocado Administrative Committee.

By Mr. Fourn:

Q. Are any written instructions given to your graders [fol. 287] station in the South Florida Growers Association packinghouse at Goulds, Florida other than defendants' exhibits "M" and "N" and plaintiffs' exhibit 9, or documents of that same nature, with respect to their duties?

A. Well, in this period of time I will say that there weren't any others necessary; they had all that was necessary for the carrying out of their duties, that is, these three documents. I gave them written instructions from time to time from my office, but most of the time I just held meetings in my office, and we discussed the different phases of the work. I wouldn't give them written instructions, that is, give written instructions to each inspector.



but I will put it on the bulletin board, and I called it to their attention that these are the regulations that we are to go by, which regulations were issued by the Avocado Administrative Committee.

Q. In addition to written instructions, I take it that you also gave them oral instructions?

A. Definitely, yes.

Q. Are you acquainted with the physical layout of the South Florida Growers Association's packinghouse at Goulds, Florida?

A. I would say that I am familiar with the operations, if that would be considered the physical layout.

Q. Could you briefly describe the operation as the fruit enters the plant until the fruit is packed out of the plant into the truck?

[fol. 288] A. It is first dumped on conveyors, which conveyors take it to the graders, and when the graders grade it, it goes onto the automatic sizers, and from the automatic sizers it falls into individual tubs for a specified or particular size, and then the packers pack out of these tubs, taking a specific size out of each tub.

Q. Into what thing or things do the packers pack the avocados?

A. There are various types of containers. Usually it is what is called a wooden flat.

Q. What happens next, if anything?

A. Now are you speaking of the packinghouse operation or are you speaking of the inspection work?

Q. Well, with respect to the packinghouse at Goulds, Florida, what happens, if anything, after the packer places the fruit in containers?

A. When the packers finish packing a container they place it on what we call a conveyor, and that conveyor conveys the fruit around to another designated spot where it is stacked according to size. This still pertains to the operation of the packinghouse.

Q. What happens next with respect to this fruit in the Goulds packinghouse, if anything, after the fruit is stacked?

A. There is a procedure there for them to place it in a cooler or refrigerating room.

[fol. 289] Q. At this same packinghouse what happens next, if anything?

A. It just stays in the cool room until they get ready to ship it out.

Q. What is the procedure, if there is any, with regard to shipping it out?

A. It is certainly necessary for the packinghouse to have the fruit inspected, and that is where it comes to my job.

Q. I am interested, Mr. Wimbish, in how the fruit leaves the packinghouse or leaves the cooler.

A. They truck it from there into trucks, which are standing alongside the docks.

Q. Sir, at the Goulds packinghouse is the grading done automatically, or how is it done?

A. The grading is done by human hands, by the human element. The sizing is done by weight.

By Mr. Ferguson:

Q. Do you mean weighing or by weight?

A. By weighing. They are placed in these little pockets and then move down to a certain weight where they fall into what we call these tubs.

By Mr. Fourn:

Q. What is the earliest point in the operation that you have just described where the inspector usually makes his inspection at the Goulds packinghouse?

A. The inspector can take his sample any place he so desires. The official inspection is made when the container [fol. 290] is packed and it is on the conveyor starting up to where it is stacked on the floor and segregated by size. However, it is a part of the inspection service to sometimes inspect them in the tub as a preliminary part of the official inspection, and if there is any doubt in the inspector's mind he can tell them that this tub here is not going to grade. They will work on one particular tub or on one particular size before it gets to where the inspection run is officially supervised. His official samples are taken out of the packed box before it is lidded.

Q. Is there any inspection made by your inspector at the completion of the grading belt?

A. Not unless the packinghouse foreman requests it. In

other words, they do occasionally come over and say, "Look at this stuff and see how it is running; do you think this will grade by size or weight?" The inspector will then run sufficient samples to determine whether or not they will meet the specified weight or grade. If they fail to meet the weight and grade, he will have one man go through the fruit one by one. He will check the size of each fruit as it goes to the boxes, and that eliminates any confusion later on after the inspector has made his official inspection.

Q. At the Goulds packinghouse is there a regular practice for the inspector to grade either at the tubs or at the end of the grading belt?

A. No, that is not the regular practice.

[fol. 291] Q. Is it done occasionally at that packinghouse?

A. It is left to the discretion of the inspector. I don't encourage it as supervisor. Any time that the inspection service can be of assistance along these lines, we will run a sample for them before packing it, which is no more than right insofar as the Federal-State Inspection Service is concerned, however, we don't make a practice of it.

Q. In what form does the inspector record his observations, if he does it at all?

A. You mean how does he record his official samples?

Q. No. I mean the earlier inspections.

A. I don't understand you. We don't have an earlier inspection. The official inspections are taken out of the packed box after the graders have graded them, after it is sized and graded in the boxes. That is his official samples, and he records that on his daily worksheet.

Q. Does the inspector record his tests of avocados on his worksheet when the avocados are at the end of the grading line?

A. He makes them at the end of the grading line, and his samples are recorded in the back of his worksheet, on the back of his worksheet. Each size is a different lot.

Q. What is the form of the official grade certificate?

A. On the final certificate issued after the fruit has been inspected?

Q. Yes.

[fol. 292] A. I do not have one of them in my possession now, but the form of certificate is United States Depart-

ment of Agriculture, and we write the grades on it, the number of containers and so forth, and whether or not it meets the Secretary's Order and the specifications of the Avocado Administrative Committee, or whatever grade it was run at that time.

Q. At what point in the operation of the packinghouse at Goulds is the inspection certificate made up?

A. It is made up at the end of the day, or whenever they decide to roll a truck. They give the inspector a manifest for a certain size, which has already been inspected, and it will probably be out of the cooler and ready to go on the truck. The packinghouse foreman will show the manifest to the inspector, and the inspector in turn goes out to the truck and gets the license number of the truck and inserts that on the certificate, so as to show where the truck is from, and he puts down the number of containers shown on the manifest furnished him by the foreman of the packinghouse. I might add, sir, that during this course of operation all of these containers are lot stamped with a Federal stamp, which is the identification to show that the individual boxes have been inspected by the Federal-State Inspection Service, and this stamp shows the house number and lot number. Each house has a lot number and an inspection number on the stamp, and these stamps are issued to these people through our agency every Monday morning for each packinghouse.

[fol. 293] Q. In the ordinary case is any inspection made of the avocados in the containers after the containers are loaded on the truck?

A. There would not be any occasion to unless the applicant so requested, because it is the sort of thing that wouldn't occur anyway, because it is the duty of the inspector to see that these boxes have been inspected.

Q. Is the initial point of the official inspection made of samples in the containers prior to the time of them being placed in the cooler or after removal from the cooler?

A. They are made prior to going into the cooler. That is the usual procedure. In other words, it is a finished product when it goes into the cooler, ready for transportation in or out of the state.

Q. During the 1957-58 avocado season to date, was there

any turnover of personnel in your inspection force with respect to your inspection of avocados?

A. Now, that statement is not very clear to me. Just what do you mean by "turnover" in inspectors? I don't understand just exactly what you mean by turnover of inspectors.

Q. I will rephrase the question. You previously stated that during 1957-58 avocado season you had seven inspectors, as well as yourself, working on avocado inspections; is that right?

A. Yes.

Q. Did the same seven men stay on the job throughout the [fol. 294] season?

A. Yes. We try to maintain a nucleus of inspectors that we consider qualified in this field of certifying avocados. I might say this, which would help you a little bit, although it goes back of what you are asking me. It is an established precedent by our department to change inspectors in each packinghouse once a week, if that is what you are referring to. The same man doesn't stay in one packinghouse all of the time. We switch them around to different packinghouses. The department has found this very desirable in our work. We will assign an inspector to a certain packinghouse for a week, and then he goes around and makes his tour of duty throughout the numerous packinghouses, and then he will come back to this packinghouse. In other words, we just keep rotating them around.

Q. Mr. Wimbish, during the peak of the avocado season in 1957, approximately how many packinghouses were in operation in your district?

A. Some of our "applicants" actually we don't consider them as packinghouses. However, they are all subject to inspection. We would call them little growers or something like that. Would you like for me to elaborate on the applicants that we have and what I consider major packinghouses for avocados?

Q. First, how many major packinghouses operate in your district at the peak of the season?

A. I would say about seven, but we have other applicants [fol. 295] who get inspections of avocados.

Q. How many other applicants or packinghouses, other

than these major packinghouses, do you have which require inspections of avocados?

A. We will put it down as ten. There are seventeen or eighteen applicants. Most of these are small operators. One inspector usually takes care of two or three of those.

Q. Do you maintain an inspector full time during the peak season at each of the seven major packinghouses?

A. No, sir. We only have two houses where the inspector stays on for continuous inspection, that is, two houses in the district.

Q. What are those two houses?

A. Harold E. Kendall, or South Florida Growers Association, and Lucerne.

Q. Are both of those houses included in your category of major packinghouses?

A. Yes.

Q. What arrangement was made with respect to inspection of avocados at the other five major packinghouses?

A. The Florida Lime and Avocado Growers Association and Rowe Groves are two packinghouses which are right together, and one inspector takes care of those two houses. He works back and forth between the two during their operations.

Q. What arrangement was made with respect to the other [fol. 296] three major packinghouses?

A. I used the word "major", and I guess I shouldn't have used that word, because actually that is a little bit on the false side. The meaning of "major" in my opinion is the same as "large". I will say that there are three more. Do you want me to give you the names?

Q. Yes.

A. Parman-Lehman Packinghouse, located at Homestead; Brooks' Groves, and you might put Gloria Groves in with these three. One man takes care of these three.

Q. Where is the Brooks' Groves packinghouse located?

A. On North Krome Avenue, just within the city limits of Homestead, on the west side of the highway.

Q. Where is the Gloria Groves packinghouse located?

A. It is located just four miles northeast of the Seaboard Railroad, in what we call the Redlands District.

Q. What would be the approximate distance between the



Parman-Lehman packinghouse and the Brooks' Groves packinghouse?

A. Two miles.

Q. And the distance from the Parman-Lehman packinghouse to the Gloria Groves packinghouse?

A. What was the first question you asked me? Didn't you ask me the distance from Parman-Lehman to Brooks' Groves packinghouse?

Q. Yes.

[fol. 297] A. That is two miles. Now you are asking me the distance from Parman-Lehman packinghouse to Gloria Groves packinghouse?

Q. Yes.

A. That would be about six miles.

Q. And what is the distance from Brooks' Groves packinghouse to the Gloria Groves packinghouse?

A. About four miles.

Q. And what is the arrangement with respect to providing inspection service to the ten small packinghouses in your district?

A. I will have to deliberate on that to some extent. One man sometimes has to take care of three or four or possibly five little sheds. That is where the growers pack their own stuff. That is what I mean when I say small sheds.

Q. With respect to the ten packinghouses which are smaller than the major packinghouses, is your inspection service continuous?

A. No, it is not continuous. It is what we call "spot checking". They notify the inspectors who are working these particular houses and tell them the approximate time that they expect to get through packing, and he tries to arrange his schedule to take care of these outlying packinghouses.

Q. During the peak of the season in 1957 how often were you able to observe the work of each of your inspectors as they inspected these twenty-four packinghouses in your district?

A. That is a question that would be hard to answer for [fol. 298] the year 1957, because I didn't keep a record of the actual visits that I made to these packinghouses. My visits are made periodically, but on numerous occasions.

On occasions I have calls from my inspectors when they feel like they have something that they are not quite sure about. Then I make a trip up to see this particular inspector and try to interpret the grade or tell him what grade a certain avocado is, or whatever the case may be. I will interpret for him the grade of the fruit or the variety of the fruit. I try to get around to see all of them once a week. If my "houses" are not working, I would make more frequent trips.

Q. To summarize your testimony, Mr. Wimbish, can we say that you see each inspector when they call upon you?

A. Yes. They may call me by telephone if they deem it necessary. Most of the times it is a case of necessity because they are not sure of themselves in regard to grade interpretations of various varieties. If it is a situation of that kind, I make it my business to get there as quickly as possible so as not to delay operations in the packing-house, and that is something that we certainly don't want to do if it is at all possible to avoid it.

Q. During the peak operations in October of 1957, how many calls would you have a day where an inspector requested assistance in determining the variety of an avocado?

A. That is a question that it is almost impossible for me to give a sensible answer to. They might run along for a [Vol. 299] week without calling me, and then they might run for twenty-four hours, and then I might get two calls in one afternoon. These loads are coming into the packing-house and naturally he is there to check them as they run through, and they might run a pear through that he wasn't quite sure about. The "applicant" might say this or that, but if the inspector is not sure as to the variety or anything else, his instructions are to contact me as quickly as possible so I can go out and make the best judgment I can in my opinion as to the variety or whatever else it is. As I stated before, that might happen once or twice a day, and then we might go a week without any complaints. It is periodical, I would say.

Q. During the peak of the avocado season in 1957 would such calls in which the inspector asked for assistance to

determine the variety of an avocado, number between five and ten a week?

A. I would say no.

Q. Would it be greater or smaller?

A. It would be less.

Q. Less than five?

A. I would say it would be less than ten by far.

Q. Less than ten but more than five per week?

A. I won't say less than ten and I won't say more than five. You never know when these situations arise. I might be available when a situation comes up and I might not be available. As I stated before, they may run a week or two [fol. 300] without any calls, and then we might get two calls in a day with respect to determining a variety, which requires my identifying the variety.

Q. Does such a call from an inspector occur numerous times during the season?

A. No, sir.

Q. Do you also have calls from inspectors in which they ask for assistance in interpreting the grade of avocados which they are seeking to establish?

A. Not very often, because they are well versed on grades and they know grades. It would be unusual when we had calls for grade interpretations; mostly the calls would have to do with the determination of varieties.

Q. Does the Florida Lime and Avocado Growers Association maintain a packinghouse in your district?

A. Yes, sir.

Q. Are you acquainted with the operation of the packinghouse?

A. Yes, I am acquainted with that type of operation and how they process the fruit. That is one of the primary duties of an inspector working in a packinghouse.

Q. Where is that packinghouse located?

A. Princeton, Florida; just west of U.S. Highway No. 1, across the Florida East Coast Railroad tracks.

Q. Is the method of operation of the packinghouse maintained by the Florida Lime and Avocado Growers Association [fol. 301] similar to the operation of the packinghouse operated by the South Florida Growers Association?

A. They are similar in one sense, in that they have the same type of machinery. They size by weight mechanically, but they do not have the facilities for refrigeration as does the South Florida Growers Association, and also their fruit is stacked on the packinghouse floor. Incidentally, when they stack it on the packinghouse floor it is accessible at all times for the inspector to make periodical inspections.

Q. At what point in the operation of the packinghouse operated by the Florida Lime and Avocado Growers Association at Princeton is the official inspection made?

A. At the end of the conveyor just before they are lidded up. It is very similar to the operation at the South Florida Growers packinghouse.

Q. Are your inspectors given any specific instructions as to the number of containers they should inspect at the Florida Lime and Avocado Growers packinghouse at Princeton?

A. No specific instructions as to the number of samples that they may run.

Q. Or as to the number of containers that they should sample?

A. We consider the containers the samples. Our inspections are made on a container basis. There is no specified requirement, but it is the duty of the inspector to run as many samples as possible, whether it is on avocados or any [fol. 302] other commodity. In other words, they run as many as they possibly can, and that is their standard instruction.

Q. Is the same instruction given to your inspectors who are stationed at the packinghouse operated by the South Florida Growers Association?

A. Yes.

Mr. Fourt: You may cross examine.

Cross examination.

By Mr. Ferguson:

Q. Mr. Wimbish, you described the contents of an inspection certificate. I show you an inspection certificate which has been marked here as plaintiffs' exhibit 3 for identification. Is this one of your inspection certificates?

A. Yes, this is the type of certificate used by us on avocado inspections.

Q. Are you familiar with the signatures of your inspectors?

A. Yes. This one is signed by one of my men, Douglas R. Pfeiffer.

Q. That is the colored copy that goes with the truck?

A. Yes.

Q. There is another copy that goes to the shipper?

A. The shipper gets two copies if he desires, but the truck can get one; in other words, the trucker can get two and the shipper one or the shipper can get one and the trucker two. It is up to them as to which one gets the two copies.

Q. Referring back to this plaintiffs' exhibit 3 for identification, I will ask you to state what do the letters "MSO" mean?

A. Those letters "MSO" mean that the avocados meet the Florida Avocado Administrative Committee's number two grade. The "MSO" actually means that the avocados meet the "Secretary's Order".

Q. That means the Secretary of Agriculture of the United States?

A. That is right. That is put on all of our certificates when they meet the requirements. If they fail to meet the Secretary's Order, we don't put it on there.

Q. If the lot of avocados fail to meet the Secretary's regulations, you would put a different kind of notation on the certificate?

A. Yes.

Q. What do you do in that case?

A. We inform the "applicant" that it doesn't conform with the Secretary's Order, and if he doesn't do anything

about it and says, "I want to ship it anyway and I want a certificate"—then we write under Remarks on the certificate just the reverse of what is on this certificate, that is, that it fails to meet the Secretary's Order, and that is stamped on the certificate.

Q. Is the shipper permitted to make the shipment anyway?

A. Yes, he can make the shipment, because we can't stop him from shipping it. When that happens, I will immediately notify the manager of the committee as to what went [fol. 304] on. That is my duty as supervisor. It is my duty as supervisor to report any violation to the manager of the committee, and then the committee takes the necessary steps. That is as far as we go with it.

Q. You stated, Mr. Wimbish, that when one of your inspectors is in doubt about the variety of a particular fruit, he calls upon you for advice; is that correct?

A. Yes.

Q. I call your attention to an incident that happened on December 5, 1957, which incident arose at the plant of Florida Lime and Avocado Growers, Inc. packinghouse. Do you recall that on that date there arose a question because the grower claimed that the avocados were Booth 5s and your inspector claimed that they were Booth 3s? Do you recall that incident?

A. Along about the fifth of December?

Q. Yes; involving about one hundred bushels of avocados.

A. I can't say whether it was exactly that date or not, but I do recall very definitely that there were a lot of avocados that the "applicant" claimed were Booth 5s, and he was dissatisfied with the decision of the inspector, so the inspector called on me to come up there and make a decision as to the variety. This was at the Florida Lime and Avocado Growers packinghouse.

Q. Your inspector called you up?

A. Yes.

Q. Did you determine that your inspector was right?

A. Yes. In my opinion they were Booth 3s variety and [fol. 305] not Booth 5 variety. That was my decision. However, I think they were still dissatisfied, which they had a perfect right to be, because if they want to go against my



decision they have a right to take it up with the committee and have the committee make a final decision as to that particular fruit in case such a question arises.

Q: What is that committee called?

A. That committee is called the Variety Index Panel. That panel is appointed by the committee to determine and decide the varieties of fruit. When a situation of this kind occurs, I get in touch with Mr. Biggar, the manager of the Avocado Administrative Committee, and I tell him that they are dissatisfied with my decision, and then he in turn tries to get in touch with each one of these members of the panel committee. This panel is really called the Variety Identifying Committee, and they make the final decision. In this particular case the committee agreed with the inspection service as to that particular variety.

Q. What happened to the avocados?

A. They didn't ship them. It was quite a loss, and it was too bad, however, they still didn't comply with the regulations.

Q. That is your understanding of the procedure?

A. That is right.

Mr. Ferguson: That is all.

Mr. Fourn: No further questions.

And further deponent saith not.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

## No. 45

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FLORIDA LIME AND AVOCADO GROWERS, INC.,  
ET AL., APPELLANTS,

vs.

CHARLES PAUL, DIRECTOR OF DEPARTMENT  
OF AGRICULTURE OF CALIFORNIA, ET AL.

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## No. 49

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CHARLES PAUL, DIRECTOR OF DEPARTMENT  
OF AGRICULTURE OF CALIFORNIA, ET AL.,  
APPELLANTS,

vs.

FLORIDA LIME AND AVOCADO GROWERS, INC.,  
ET AL.

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# Registered Avocado Handler

NO. 7

**This Is To Certify That**

Florida Lime & Avocado Growers, Inc.

**Mailing Address**

P. O. Box 176, Princeton, Fla.

**Inspection Point**

Princeton

has complied with the provisions prescribed in the Avocado Marketing Agreement and Order and is hereby authorized to operate as a Handler of Avocados and to pack Avocados for market or transportation during the shipping season beginning 4/1/57 and ending 3/31/58

1957-58  
SEASON

**Avocado Administrative Committee**

1102 NORTH KROME AVENUE

HOMESTEAD, FLORIDA

ISSUED April 9, 1957

*Daniel M. Bogan*  
Manager

[fol. 306]

PLAINTIFFS' EXHIBIT 1

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# Avocado Handler

NO. 18

**This Is To Certify That**

South Florida Growers Assn., Inc.

**Mailing Address**

P. O. Box 468, Goulds, Fla.

**Inspection Point**

Goulds

has complied with the provisions prescribed in the Avocado Marketing Agreement and Order and is hereby authorized to operate as a Handler of Avocados and to pack Avocados for market or transportation during the shipping season beginning 4/1/57 and ending 3/31/58.

1957-58  
SEASON

**Avocado Administrative Committee**

1102 NORTH KROME AVENUE

HOMESTEAD, FLORIDA

ISSUED April 9, 19 57

*R. M. Bagg*  
Manager

PLAINTIFFS' EXHIBIT 2

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[fol. 308]

PLAINTIFFS' EXHIBIT 3

U. S. DEPARTMENT OF AGRICULTURE  
 AGRICULTURAL MARKETING SERVICE  
 FLORIDA DEPARTMENT OF AGRICULTURE  
 CITRUS AND VEGETABLE INSPECTION DIVISION

No. B- 66158

## TRUCK INSPECTION CERTIFICATE

I, the undersigned, on the date specified made personal inspection of samples believed by me to be representative of the lot of products herein described and do hereby certify that the conditions, at the said time on said date, pertaining to such products as shown by said samples, were as stated below:

INSPECTION POINT: PRINCETON, Fla. TRAILER TRUCK INITIAL & NO. FIA 1-0-853  
 INSPECTION BEGUN: 9:00 AM November 14, 1957 COMPLETED: 2:30 PM November 15, 1957  
 (HOUR) (DATE) (HOUR) (DATE)  
 APPLICANT: Florida Lime & Avocado Growers, Inc. ADDRESS: PRINCETON, Florida

PRODUCT	NO. PACKAGES	KIND OF CONTAINER	BRAND	GRADE
Avocados	1874	1/4 Bu F.B. Box	Stampin Lot 59 HSC 20	1874
<div data-bbox="186 862 676 1084" style="border: 1px solid black; padding: 5px; display: inline-block;">           INSPECTED AND RELEASED            1957 WINTERHAVEN            Station            of Agriculture         </div> <div data-bbox="793 982 1146 1169" style="border: 1px solid black; padding: 5px; display: inline-block;">           NAME: <u>ALV</u>            AFTER SALE            THIS DEPARTMENT            SHALL BE RESPONSIBLE         </div>				

SIZE

REMARKS

MEETS Florida ANC No 2  
 MSO

*Douglas P. Pfeiffer*

Miles @ 7-1/2¢ per mile = \$

(INSPECTOR)



SUMMARY OF AVOCADO SHIPMENTS  
BY VARIETIES AND BY WEEKS  
1955-56 SEASON  
(55# Box Equivalents)

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[Vol. 309]

PLAINTIFFS' EXHIBIT 4

Line	Week Ending	Fuchs	Pollocks & Simmonds	Trapp	Waldin	Pinelli	Tonnage	Booth 8	Simpson	Lula	Booth 7 Booth 7B	Hickson	Collinson
1	Jun 16 - Jul 2	75											
2	Jul 9	1991	330										
3	Jul 16	2154	1099										
4	Jul 23	3248	3194										
5	Jul 30	2132	4495										
6	Aug 6	1203	4783										
7	Aug 13	272	5776	159	170								
8	Aug 20	206	2313	684	3296								
9	Aug 27	246	1286	4301	4480	131							
10	Sep 3	25	271	1646	10260	332							
11	Sep 10	5	250	2055	7115	154	266						
12	Sep 17	4	99	2284	13073	205	366	496					
13	Sep 24		95	1160	6366	25	784	3362					
14	Oct 1		8	362	2614	49	2133	2334	314				
15	Oct 8			274	1108		963	11072	257	1402			
16	Oct 15			36	655	1		4653		1002	3619		
17	Oct 22		36	32	645	9	2	23335	364	5724	1318	316	1843
18	Oct 29		18	25	268			10231	100	3528	7289	769	1047
19	Nov 5			2	162			6394	26	3906	4442	5180	1230
20	Nov 12				21			8515		3600	6515	1867	1043
21	Nov 19				26			9075	18	10659	9118	1973	2161
22	Nov 26							1945	14	9225	5343	783	505
23	Dec 3							2329		5557	8051	2022	451
24	Dec 10							1021		4532	8510	2721	1333
25	Dec 17							390		7667	3925	1702	829
26	Dec 24							12		4237	1271	239	81
27	Dec 31							45		3744	4099	187	110
28	Jan 7							228		5723	1660	58	59
29	Jan 14							41		11371	695	39	200
30	Jan 21							16		11476	229	9	409
31	Jan 28									3763			156
32	Feb 4									7060	29		142
33	Feb 11									4959			36
34	Feb 18									2308			
35	Feb 25									1121			
36	Mar 3									1115			
37	Mar 10									407			
38	Mar 17									4			
39	Mar 24												
40	Mar 31									27			
	TOTAL	11581	24059	13028	50259	906	4514	85494	1093	124237	68613	18425	11635

Monroe	Hall	Avon	Harman	Booth 3	Booth 5	Choquette	Taylor	Booth 1	Linda	Wagner	Seedling	Other	TOTAL	Line
											21	--	96	1
											27	10	2304	2
											149	14	3416	3
											105	35	6612	4
											245	61	6953	5
											590	32	6608	6
											919	23	7319	7
											1451	52	8042	8
											1590	46	12060	9
											1362	41	13937	10
											1246	80	11171	11
											1293	61	17881	12
											1050	283	13133	13
											1050	103	8997	14
											1401	420	16897	15
											784	383	11133	16
											477	23	34624	17
364	221	70									445	309	24684	18
153	190	29	30								276	392	22472	19
	185	84	16	558							138	141	29633	20
	204	17	180	1548	655		5				151	499	36289	21
	170	209	35	959		105		164			13	145	20115	22
	85	503	256	4214	62	53	145	614			192	567	25101	23
	177	629	66	2405		24	166	2250			99	363	24298	24
1	147	18	93	3854	560	516	577	2544	196		29	281	25691	25
	37		80	806	369	39	470	4413	28		22		12104	26
11	47	10	23	883	123	423	2089	4012	193		44	181	16284	27
76	40		165	1036	4	119	1132	6616	202	10	176	328	17672	28
253	38			605	9	496	1502	5825	36	86	319	38	21675	29
1084	4		13	132	9	397	1748	1548	53	329	416	28	17900	30
196	6		13	33		51	1750	244	85	483	20	133	11933	31
633						4	956	121	230	669		125	10019	32
656					15	5	1978	154	461	712	152	302	9430	33
98					2	27	1753	191	555	661	5	288	5928	34
171							659	152	2	402	53	392	2992	35
105						9	18	2	23	67		357	1696	36
							22	1		13	4	193	640	37
							5	2	1	24	7	67	110	38
										13		11	24	39
							29	28		16			100	40
3801	1551	1569	972	17093	1808	2368	15344	28921	2117	3487	16391	6837	516103	TOTAL

COMPOSITE SUPPLY OF AVOCADOS  
1955-56 Season  
By Points of Origin  
(55# Bushels)

	<u>California*</u>	<u>Florida</u>	<u>Cuba**</u>	<u>U. S. Total</u>
April 9	56,250			56,250
16	55,500			55,500
23	54,500			54,500
30	53,250			53,250
May 7	52,500			52,500
14	51,000			51,000
21	49,000			49,000
28	47,500			47,500
June 4	45,500			45,500
11	41,000			41,000
18	34,000			34,000
25	28,000		12,000*	38,000
July 2	21,500	90	13,944*	35,540
9	19,500	2,304	16,677*	38,541
16	18,000	3,416	25,709	47,125
23	17,500	6,612	12,727	36,839
30	17,000	6,953	21,716	45,669
Aug. 6	17,000	6,608	17,716	41,324
13	16,500	7,319	12,862	36,701
20	16,500	8,042	13,621	38,163
27	16,000	12,030	11,163	39,243
Sept. 3	16,000	13,937	7,171	37,108
10	16,000	11,171	3,171	30,342
17	15,500	17,881	1,939	35,320
24	15,500	13,135		28,635
Oct. 1	15,500	8,997		24,497
8	15,500	16,837		32,337
15	15,500	11,133		26,633
22	15,000	34,624		49,624
29	14,500	24,684		39,184
Nov. 5	14,000	22,472		36,472
12	12,000	29,633		41,633
19	10,000	36,239		46,239
26	5,000	20,115		25,115
Dec. 3	8,000	25,101		33,101
10	10,000	24,298		34,298
17	10,500	23,691		34,191
24	5,000	12,104		17,104
31	9,000	16,264		25,264
Jan. 7	12,000	17,672		29,672
14	14,000	21,675		35,675
21	16,500	17,900		34,400
28	18,000	11,933		29,933
Feb. 4	19,000	10,019		29,019
11	20,000	9,430		29,430
18	20,000	5,928		25,928
25	20,000	2,992		22,992
Mar. 3	20,000	1,696		21,696
10	20,000	640		20,640
17	20,000	110		20,110
24	20,000	24		20,024
31	20,000	100		20,100
Total	1,187,500	516,103	170,436	1,874,039

\* Estimated from monthly production data.

\*\* Unpublished records of U. S. D. A. Inspection Service.

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PLAINTIFFS' EXHIBIT 5



## REGULATORY OPERATIONS

The Marketing Agreement and Order regulating the handling of avocados grown in South Florida permits the issuance of the following types of regulations:

1. Maturity Regulations  
S/S 969.51 (1) "Prohibit, prior to such time as shall be specified, the handling of any size or sizes of any variety or varieties of avocados grown in District 1 or District 2."
2. Grade and Size Regulations  
S/S 969.51 (2) "Prohibit the handling of any variety or varieties of avocados grown in District 1 or District 2 which do not meet such quality and maturity standards as shall be prescribed."
3. Container Regulations  
S/S 969.51 (3) "Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, and the transportation, sale, shipment or other handling of avocados."

All of these forms of regulation were recommended and used during the 1956-57 season, plus a modified and expanded schedule of procedural rules as authorized by S/S 969.28(c) of the Order.

## MATURITY REGULATIONS

Shipping weights, dates and sizes were established for a total of 45 named varieties and for two general classifications of seedlings and unlisted varieties. The seedling regulations were as follows:

Schedule for shipment of seedlings, un-named varieties and varieties not listed elsewhere in the regulations:

West Indian Type:	None before June 1. June 1 to June 18, none smaller than 16 oz. June 18 to July 16, none smaller than 14 oz. July 16 to Sept. 10, none smaller than 12 oz. After Sept. 10, no restrictions.
Guatemalan Type and Guatemalan x W. Indian Hybrids:	None before Sept. 3. Sept. 3 to Oct. 1, none smaller than 14 oz. Oct. 1 to Dec. 17, none smaller than 12 oz. After Dec. 17, no restrictions.

Exceptions applicable to seedlings and unlisted varieties: Avocados which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped, without regard to weight, if the exterior of the seedcoat is of a brown color which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.

[fol. 312]

PLAINTIFFS' EXHIBIT 6

The following shipping schedule was applied to named varieties during the 1956-57 season:

[fol. 313]

Variety	Date A	Min Wt	Min Dia	Date B	Min Wt	Min Dia	Date C	Min Wt	Min Dia	Date D
Fuchs	6-18	12	3 1/16	7-2	10	2 13/16	7-16	8	2 9/16	8-6
Pollock	7-2	18	3 10/16	7-16	15	3 6/16	7-30	12	3 1/16	8-27
Simmonds	7-2	16	3 9/16	7-16	14	3 7/16	7-30	12	3 4/16	8-27
Nadir	7-2	14	3 5/16	7-16	12	3 2/16	7-30	9	2 12/16	8-27
Hardee	7-2	16	3 5/16	7-16	14	3 2/16	7-30	10	2 12/16	8-27
Trapp	7-23	14	3 9/16	8-6	12	3 7/16	8-20	10	3 3/16	9-17
Waldin	7-30	16	3 9/16	8-13	14	3 6/16	8-27	10	3 1/16	10-15
Peterson	8-6	12	3 6/16	8-20	10	3 2/16	9-3	8	2 14/16	9-24
Pinelli	8-20	18	--	8-27	16	--	9-3	12	--	9-24
Tonnage	8-20	14	--	8-27	12	--	9-3	10	--	9-24
Fairchild	8-20	16	3 10/16	9-3	14	3 7/16	9-17	10	3 0/16	10-1
(Booth 8	9-17	15	3 6/16	9-24	13	3 4/16	10-15	11	3 1/16	--
(Booth 8	--	--	--	--	--	--	11-5	9	2 14/16	11-26
Nirody	9-17	18	3 15/16	10-1	15	3 11/16	10-15	10	3 3/16	11-5
Simpson	10-1	16	--	10-15	14	--	10-29	10	--	11-19
(Lula	10-8	18	3 10/16	10-22	16	3 7/16	11-5	14	3 4/16	--
(Lula	--	--	--	--	--	--	12-3	11	2 15/16	12-10
Rue	10-8	30	4 3/16	10-15	24	3 15/16	10-29	18	3 9/16	11-12
Black Prince	10-8	16	--	10-22	14	--	11-5	10	--	11-26
Booth 7	10-15	16	3 10/16	10-29	14	3 8/16	11-12	10	3 2/16	12-3
Sherman	10-15	16	--	10-29	14	--	11-12	10	--	12-3
Vaca	10-15	16	3 9/16	10-29	14	3 7/16	11-12	10	3 0/16	12-3
Marcus	10-15	32	--	--	--	--	--	--	--	11-26
Hickson	10-22	14	3 4/16	11-5	11	3 0/16	11-19	9	2 13/16	12-10
Collinson	10-22	16	3 11/16	11-5	14	3 8/16	11-19	10	3 1/16	12-10
Avon	10-22	14	3 8/16	11-5	12	3 5/16	11-19	9	2 15/16	12-10
Booth 5	10-22	16	3 11/16	11-5	14	3 9/16	11-19	9	3 1/16	12-10
Blair	10-22	16	--	11-5	14	--	11-19	9	--	12-10
Nelson	10-22	14	3 8/16	11-5	12	3 5/16	11-19	9	2 15/16	12-10
Monroe	10-29	24	--	11-26	20	--	12-17	14	--	1-7
Hall	11-5	20	3 9/16	11-19	16	3 5/16	12-3	14	3 3/16	12-24
Herman	11-5	16	3 9/16	11-19	14	3 7/16	12-3	10	3 1/16	12-24
Winslowson	11-5	18	3 14/16	11-19	16	3 12/16	12-3	10	3 2/16	12-24
Booth 10	11-5	16	--	11-19	14	--	12-3	9	--	12-24
Booth 11	11-5	16	--	11-19	14	--	12-3	9	--	12-24
Ajax (Booth 7B)	11-12	18	3 12/16	11-26	15	3 9/16	12-10	11	3 3/16	12-31
Booth 3	11-19	16	3 9/16	12-3	14	3 7/16	12-17	10	3 1/16	1-7
Booth 1	11-19	16	3 11/16	12-3	14	3 8/16	12-17	10	3 1/16	1-7
Taylor	11-19	14	3 4/16	12-3	12	3 2/16	12-17	9	2 13/16	1-7
Dunedin	11-19	16	3 10/16	12-3	14	3 8/16	12-17	9	2 15/16	1-7
Choquette	11-26	24	--	12-10	18	--	12-17	14	--	12-31
Linda	12-10	18	--	12-24	15	--	1-7	12	--	1-21
Byars-1	12-10	16	--	12-24	14	--	1-7	9	--	1-28
Nabal	12-10	14	3 8/16	12-24	12	3 5/16	1-7	8	2 14/16	1-28
Wagner	12-17	12	3 5/16	12-31	10	3 2/16	1-14	8	2 14/16	2-4
Schmidt	1-28	16	--	2-11	14	--	--	--	--	2-25
Itzamna	2-25	--	--	--	--	--	--	--	--	2-25

Date "A" No fruit may be shipped before this date.

Date "D" No restrictions on size or weight after this date.

Where a minimum weight and minimum diameter are given, fruit which meets either standard may be shipped.

All weights in ounces, diameters in inches.

**SUMMARY OF AVOCADOS HANDLED**  
**By Varieties and by Weeks**  
**1956-57 Season**  
**55# Box Equivalent\***

LINE	Week Ending	Fuchs	Pollocks & Simmonds	Trapp	Waldin	Pinelli	Tonnage	Booth 8	Simpson	Lula	Booth 7 Booth 7B	Hickson	Collinson
1	Jun 1	5											
	Jun 30												
2	Jul 7	195											
3	Jul 14	650	25										
4	Jul 21	677	1310										
5	Jul 28	723	3370										
6	Aug 4	377	4270										
7	Aug 11	696	2866										
8	Aug 18	289	1468	89	485								
9	Aug 25	105	645	1605	1323								
10	Sep 1	56	496	968	4905								
11	Sep 8	13	270	1308	2981	47	447						
12	Sep 15	12	173	1741	6645	16							
13	Sep 22		21	1972	6060		10	758					
14	Sep 29		16	812	5143	135	461	4838					
15	Oct 6		28	1099	4741		1103	5251	18				
16	Oct 13		1	695	4240	2	2340	4510		430			
17	Oct 20			203	698		32	10872	62	733	2506		
18	Oct 27			25	734		110	4117	187	6136	1749	1739	3323
19	Nov 3			28	172		2	3877	189	4746	6093	757	2235
20	Nov 10			2	8		2	5945	10	5097	2047	2495	3193
21	Nov 17				8		2	2363		7669	10315	1329	799
22	Nov 24				5			1507		6482	1831	1308	1523
23	Dec 1							5296		8817	4326	2237	1124
24	Dec 8							2464		14337	4525	1907	1007
25	Dec 15							1598	22	11868	2611	1983	401
26	Dec 22							1090	22	4369	668	987	317
27	Dec 29							409		4918	700	394	632
28	Jan 5							269	4	11026	1440	611	1556
29	Jan 12							70		10981	643	466	1154
30	Jan 19							97		9286	113	251	454
31	Jan 26									6289	25	4	153
32	Feb 2							9		7026	10		243
33	Feb 9							2		8129	8	9	135
34	Feb 16							2		8126	13		78
35	Feb 23									6137	10	8	5
36	Mar 2									1077			
37	Mar 9									1104			
38	Mar 16									490			
39	Mar 23									53			
40	Mar 31									3			
TOTAL		3798	14959	10547	38148	200	4509	55344	514	145329	39633	16485	18332

[fol. 314]

PLAINTIFFS' EXHIBIT 7



Avon	Monroe	Hall	Booth 5	Herman	Booth 3	Booth 1	Choquette	Taylor	Linda	Wagner	Seedling	Other	TOTAL	LINE
													5	1
													195	2
											4		679	3
											27	91	2105	4
											57	22	4172	5
											185	3	4835	6
											471	2	4035	7
											647	4	2982	8
											676	62	4416	9
											563		6988	10
											573	24	5663	11
											499	11	9097	12
											703		9524	13
											944	36	12385	14
											888	141	13269	15
											1605	389	14212	16
											848	576	16530	17
39											1270	138	19567	18
	8										428	254	18789	19
36	15	971	15								353	395	20584	20
	657	569	9	75							303	253	24351	21
365	164	328	23	19	473	778					246	105	15157	22
4	231	242	267	174	1576	1489	284	76			186	716	27045	23
	103	244	84	329	1414	3838	137	34			217	582	31222	24
		243	43	100	900	1029	457	692	82		211	130	22370	25
		67	9		1531	415	117	309			21	35	9957	26
		14	2	5	1294	1477	100	574	31		100	91	10741	27
		235	114	34	2456	2255	209	2740	55		229	12	23245	28
	96	104	90	107	1269	2554	233	3257	321		166	212	21723	29
		46	3		319	1087	19	3590	113	138	131	145	15792	30
	48	6	8	1	165	1341	121	2969	190	34	37	212	11603	31
	532	79	21	9	272	843	60	3765	200	26	96	68	13259	32
	510	17		3	38	773	75	3437	215	1249	78	152	14830	33
	448	19		7	22	204	11	1131	510	557	104	431	11663	34
11	253				20	133	29	1524	546	206	66	177	9125	35
	112				43	42		1021	343	126	105	862	3731	36
	152	9			15	37		157	13	46	52	977	2562	37
	15				7			1	59	57	11	156	796	38
									21		20	61	155	39
						3					4	50	60	40
455	3344	3193	688	863	11814	18298	1852	25277	2699	2439	13124	7575	439419	TOTAL

\* Lines 1-13 show net quantities shipped, based on 3 flats equal 1 multilayer, 4 flats equal one bushel.

Lines 14-40 show approximate gross quantities handled (including gradeout) as reported weekly by handlers.

**COMPOSITE SUPPLY OF AVOCADOS**  
By Season and Point of Origin  
(Bushels)

1955-56 Season					1956-57 Season				
Week Ending	Calif-ornia	Flor-ida*	Cuba	U. S. Total*	Week Ending	Calif-ornia	Flor-ida	Cuba	U. S. Total
Apr 9	56,250			56,250	Apr 7	22,000			22,000
16	55,500			55,500	14	21,900			21,900
23	54,500			54,500	21	21,200			21,200
30	53,250			53,250	28	20,600			20,600
May 7	52,500			52,500	May 5	19,500			19,500
14	51,000			51,000	12	18,000			18,000
21	49,000			49,000	19	14,000			14,000
28	47,500			47,500	26	9,600			9,600
Jun 4	45,500			45,500	Jun 2	7,400			7,400
11	41,000			41,000	9	7,000			7,000
18	34,000			34,000	16	7,000			7,000
25	26,000		12,000	38,000	23	7,000		2,640	9,640
Jul 2	21,500	162	13,944	35,606	30	7,100	5	6,036	13,141
9	19,500	2,351	16,677	38,528	Jul 7	7,200	195	8,773	16,168
16	18,000	3,470	25,709	47,179	14	7,400	679	12,399	20,478
23	17,500	7,000	12,727	37,227	21	7,500	2,105	15,967	25,572
30	17,000	6,513	21,716	45,229	28	7,600	4,172	17,153	28,925
Aug 6	17,000	6,946	17,716	41,662	Aug 4	8,000	4,835	17,387	30,222
13	16,500	7,213	12,882	36,595	11	8,200	4,035	15,997	28,232
20	16,500	7,991	13,621	38,112	18	8,500	2,982	14,642	26,124
27	16,000	12,410	11,163	39,573	25	8,800	4,416	15,270	28,486
Sep 3	16,000	14,459	7,171	37,630	Sep 1	8,800	6,988	14,103	29,891
10	16,000	11,557	3,171	30,728	8	9,200	5,663	10,691	25,554
17	15,500	17,446	1,939	34,885	15	9,700	9,097	5,065	23,862
24	15,500	12,876		28,376	22	10,100	9,524	2,696	22,320
Oct 1	15,500	12,048		27,548	29	10,800	9,697		20,497
8	15,500	14,027		29,527	Oct 6	11,000	9,974		20,974
15	15,500	10,544		26,044	13	11,000	10,851		21,851
22	15,000	34,740		49,740	20	10,200	14,131		24,331
29	14,500	24,202		38,702	27	9,000	15,368		24,368
Nov 5	14,000	21,715		35,715	Nov 3	7,500	12,524		20,024
12	12,000	28,894		40,894	10	3,000	17,208		20,208
19	10,000	36,682		46,682	17	5,000	19,793		24,793
26	5,000	18,499		23,499	24	5,500	12,013		17,513
Dec 3	8,000	22,483		30,483	Dec 1	6,000	21,515		27,515
10	10,000	24,564		34,564	8	5,500	24,481		29,981
17	10,500	25,290		35,790	15	3,000	20,614		23,614
24	5,000	9,655		14,655	22	5,500	9,278		14,778
31	9,000	15,180		24,180	29	7,700	8,011		15,711
Jan 7	12,000	18,153		30,153	Jan 5	9,200	17,411		26,611
14	14,000	21,075		35,075	12	10,400	16,974		27,374
21	16,500	17,096		33,596	19	11,700	12,804		24,504
28	18,000	11,591		29,591	26	12,700	8,646		21,346
Feb 4	19,000	9,526		28,526	Feb 2	14,000	11,097		25,097
11	20,000	9,017		29,017	9	15,000	12,142		27,142
18	20,000	5,601		25,601	16	16,000	8,760		24,760
25	20,000	2,751		22,751	23	17,000	6,180		23,180
Mar 3	20,000	1,658		21,658	Mar 2	17,500	3,584		21,084
10	20,000	678		20,678	9	17,500	2,216		19,716
17	20,000	101		20,101	16	17,500	798		18,298
24	20,000	22		20,022	23	17,000	108		17,108
31	20,000	96		20,096	31	16,000	53		16,053
				1,187,500					575,500
				506,282					360,927
				170,436					158,819
				1,864,218					1,095,246

Source: California shipments estimated from monthly production data supplied by Calavo Growers of California. Florida shipments from Avocado Administrative Committee files (does not reflect corrections or amendments to certificates). Cuban shipments from unpublished U. S. D. A. records.

\* 1955-56 Florida quantities revised to reflect standard base of 4 flats = one bushel, one multilayer equals 3 flats.

**AVOCADO SHIPPING DATES**  
**1957-58 Season**  
**(Issued October 8, 1957)**

*Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Fuchs	6-17	12	3 1/16	7-1	11	2 15/16	7-15	10	2 13/16	8-5
Pollock	7-1	18	3 11/16	7-22	16	3 8/16	8-5	14	3 5/16	8-26
Simmonds	7-1	16	3 9/16	7-22	14	3 7/16	8-5	12	3 4/16	8-26
Hardee	7-1	16	3 5/16	7-15	14	3 2/16	7-29	12	2 15/16	8-26
Nadir	7-8	14	3 5/16	7-22	12	3 2/16	8-5	10	2 14/16	9-2
Trapp	7-29	14	3 9/16	8-12	12	3 7/16	8-26	10	3 3/16	9-16
Waldin	8-5	16	3 9/16	8-19	14	3 6/16	9-2	11	3 2/16	9-30
Petersen	8-5	12	3 6/16	8-19	11	3 4/16	9-2	10	3 2/16	9-23
Pinelli	8-19	18		8-26	16		9-2	12		9-23
Tonnage	8-26	14	3 5/16	9-2	12	3 2/16	9-9	10	2 14/16	9-23
Fairchild	8-26	16	3 10/16	9-9	14	3 7/16	9-23	11	3 2/16	10-7
(Booth 8	9-16	15	3 6/16	9-30	13	3 4/16	10-14	11	3 1/16	--
(Booth 8	--	--	--	--	--	--	10-28	10	2 15/16	11-18
Nirody	9-16	18	3 15/16	9-30	15	3 11/16	10-14	12	3 6/16	11-4
Simpson	9-30	16		10-14	14		10-28	10		11-18
Rue	10-7	30	4 3/16	10-14	24	3 15/16	10-28	18	3 9/16	11-11
B. Prince	10-7	16		10-21	14		11-4	10		11-25
(Lula	10-7	18	3 10/16	10-21	16	3 7/16	11-4	14	3 4/16	--
(Lula	--	--	--	--	--	--	11-18	11	2 15/16	12-9
Booth 7	10-14	16	3 10/16	10-28	14	3 8/16	11-11	11	3 2/16	12-2
Sherman	10-14	16		10-28	14		11-11	10		12-2
Vaca	10-14	16	3 9/16	10-28	14	3 7/16	11-11	10	3 0/16	12-2
Marcus	10-14	32								11-25
Hickson	10-21	14	3 4/16	11-4	12	3 1/16	11-18	10	2 15/16	12-9
Collinson	10-21	16	3 11/16	11-4	14	3 8/16	11-18	10	3 1/16	12-9
Avon	10-21	14	3 8/16	11-4	12	3 5/16	11-18	9	2 15/16	12-9
Booth 5	10-21	16	3 11/16	11-4	14	3 9/16	11-18	10	3 3/16	12-9
Blair	10-21	16		11-4			11-18			12-9
Nelson	10-21	14	3 8/16	11-4	12	3 5/16	11-18	10	3 1/16	12-9
Winslowson	10-28	18	3 14/16	11-11	16	3 12/16	11-25	10	3 2/16	12-24
Monroe	10-28	24		11-25	20		12-16	14		1-6
Hall	10-21	24	3 13/16	11-4	18	3 7/16	12-2	14	3 3/16	12-24
Herman	11-4	16	3 9/16	11-18	14	3 7/16	12-2	10	3 1/16	12-24
Booth 10	11-4	16		11-18	14		12-2	10		12-24
Booth 11	10-28	16	3 12/16	11-11	14	3 9/16	12-2	10	3 3/16	12-24
Ajax(B. 7B)	11-11	18	3 12/16	11-25	15	3 9/16	12-9	11	3 3/16	12-31
Booth 3	11-11	16	3 9/16	11-25	14	3 7/16	12-9	10	3 1/16	12-31
Booth 1	11-18	16	3 11/16	12-2	14	3 8/16	12-16	10	3 1/16	1-6
Taylor	11-18	14	3 4/16	12-2	12	3 2/16	12-16	9	2 13/16	1-6
Dunedin	11-18	16	3 10/16	12-2	14	3 8/16	12-16	10	3 1/16	1-6
Choquette	10-28	30	4 5/16	11-18	22	3 15/16	12-2	18	3 11/16	1-6
Linda	12-9	18		12-23	15		1-6	12		1-20
Byars #1	12-9	16		12-23	14		1-6	10		1-27
Nabal	12-9	14	3 8/16	12-23	12	3 5/16	1-6	9	3 0/16	1-27
Wagner	12-16	12	3 5/16	12-30	10	3 2/16	1-13	8	2 14/16	2-3
Schmidt	1-27	16		2-10	14					2-24
Itzanna	2-24									2-24

Column "A" No fruit may be shipped before this date.

Column "D" No restrictions on size or weight on or after this date.

All weights in ounces, diameters in inches. Where a minimum weight and minimum diameter are given, fruit which meets either standard may be shipped.

Schedule for shipment of seedlings, un-named varieties and varieties not listed elsewhere in the regulations

West Indian Type: None to be shipped before June 3  
June 3 to June 17, none smaller than 16 oz.  
June 17 to July 15, none smaller than 14 oz.  
July 15 to Sept. 9, none smaller than 12 oz.  
On or after Sept. 9, no size restrictions

Guatemalan Type None to be shipped before Sept. 9  
and Guatemalan x Sept. 9 to Oct. 7, none smaller than 14 oz.  
W. Indian Hybrids: Oct. 7 to Dec. 23, none smaller than 12 oz.  
On or after Dec. 23, no size restrictions

Exceptions applicable to seedlings and unlisted varieties: Avocados of the seedling or unlisted variety category which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped, without regard to weight, if the exterior of the seedcoat is of a brown color which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.



**AVOCADO ADMINISTRATIVE COMMITTEE**  
Homestead, Florida

1102 North Krome Avenue

Telephone CI 7-0848

Report No. 57/58-14

September 30, 1957

Summary of Avocado Shipments  
from the  
South Florida Production Area

1957-58 Season

1956-57 Season

<u>Period</u>	<u>Bushels</u>	<u>Period</u>	<u>Bushels</u>
April 1-July 27	8,430	April 1-July 28	7,156
July 28-Aug. 3	2,974	July 29-Aug. 4	4,835
Aug. 4-10	6,575	Aug. 5-11	4,035
Aug. 11-17	5,493	Aug. 12-18	2,982
Aug. 18-24	8,086	Aug. 19-25	4,416
Aug. 25-31	11,509	Aug. 26-Sept. 1	6,988
Sept. 1-7	14,805	Sept. 2-8	5,663
Sept. 8-14	11,838	Sept. 9-15	9,097
Sept. 15-21	12,358	Sept. 16-22	9,524
Sept. 22-28	11,054	Sept. 23-29	9,697
<b>Total</b>	<b>93,122</b>		<b>64,393</b>

Avocado Shipments  
by  
Type of Container

	<u>Standard Flats</u>	<u>Multilayer Boxes</u>
Sept. 15-21, 1957	45,905	1,176
Sept. 22-28, 1957	40,911	1,102
Sept. 23-29, 1956	36,148	881

Distribution  
1957-58 Season

<u>Period</u>	<u>Total Units Packed</u>	<u>Units for Florida Destinations*</u>	<u>Per Cent for Florida Destinations*</u>
June 1-July 27, 1957	33,715	11,201	33.2
July 28-Aug. 3	11,897	4,038	33.9
Aug. 4-10	26,301	4,048	15.4
Aug. 11-17	21,972	4,844	22.0
Aug. 18-24	32,343	3,469	10.7
Aug. 25-31	46,036	4,724	10.3
Sept. 1-7	59,215	4,471	7.5
Sept. 8-14	47,353	3,181	6.7
Sept. 15-21	49,433	5,233	10.5
Sept. 22-28	44,217	3,120	7.0
<b>Total</b>	<b>372,486</b>	<b>48,329</b>	<b>12.9</b>

\*Does not include drop lots transported by common or contract carriers.

AAC-412

David M. Biggar, Manager  
Avocado Administrative Committee

[Vol. 318]

PLAINTIFFS' EXHIBIT 10

**AVOCADO ADMINISTRATIVE COMMITTEE**  
Homestead, Florida

1102 North Krome Avenue

Telephone CI 7-0848

Report No. 57/58-18

October 28, 1957

Summary of Avocado Shipments  
from the  
South Florida Production Area

1957-58 Season

1956-57 Season

<u>Period</u>	<u>Bushels</u>	<u>Period</u>	<u>Bushels</u>
April 1-Aug. 31	43,067	April 1-Sept. 1	30,412
Sept. 1-7	14,805	Sept. 2-8	5,663
Sept. 8-14	11,838	Sept. 9-15	9,097
Sept. 15-21	12,358	Sept. 16-22	9,524
Sept. 22-28	11,054	Sept. 23-29	9,697
Sept. 29-Oct. 5	18,083	Sept. 30-Oct. 6	9,974
Oct. 6-12	17,974	Oct. 7-13	10,851
Oct. 13-19	26,417	Oct. 14-20	14,131
Oct. 20-26	20,986	Oct. 21-27	15,368
<b>Total</b>	<b>176,582</b>		<b>114,717</b>

Avocado Shipments  
by  
Type of Container

	<u>Standard Flats</u>	<u>Multilayer Boxes</u>
Oct. 13-19, 1957	99,562	2,035
Oct. 20-26, 1957	75,842	2,701
Oct. 21-27, 1956	55,964	1,836

Distribution  
1957-58 Season

<u>Period</u>	<u>Total Units Packed</u>	<u>Units for Florida Destinations*</u>	<u>Per Cent for Florida Destinations*</u>
June 1-Aug. 31, 1957	172,264	32,324	18.7
Sept. 1-7	59,219	4,471	7.5
Sept. 8-14	47,353	3,181	6.7
Sept. 15-21	49,433	5,233	10.5
Sept. 22-28	44,217	3,120	7.0
Sept. 29-Oct. 5	72,334	3,847	5.3
Oct. 6-12	71,897	5,230	7.2
Oct. 13-19	105,667	3,924	3.7
Oct. 20-26	83,945	5,259	6.3
<b>Total</b>	<b>706,329</b>	<b>66,589</b>	<b>9.4</b>

\*Does not include drop lots transported by common or contract carriers.

**AVOCADO ADMINISTRATIVE COMMITTEE**  
Homestead, Florida

1102 North Krome Avenue

Telephone CI 7-0848

Report No. 57/58-22

November 25, 1957

**Summary of Avocado Shipments  
from the  
South Florida Production Area**

<u>1957-58 Season</u>		<u>1956-57 Season</u>		<u>1955-56 Season</u>	
<u>Period</u>	<u>Bushels</u>	<u>Period</u>	<u>Bushels</u>	<u>Period</u>	<u>Bushels</u>
Apr. 1-Sept. 28	93,122	Apr. 1-Sept. 29	64,393	Apr. 1-Oct. 1	118,609
Sept. 29-Oct. 5	18,083	Sept. 30-Oct. 6	9,974	Oct. 2-8	16,897
Oct. 6-12	17,974	Oct. 7-13	10,851	Oct. 9-15	11,133
Oct. 13-19	26,417	Oct. 14-20	14,131	Oct. 16-22	34,624
Oct. 20-26	20,986	Oct. 21-27	15,368	Oct. 23-29	24,684
Oct. 27-Nov. 2	23,167	Oct. 28-Nov. 3	12,524	Oct. 30-Nov. 5	22,472
Nov. 3-9	22,799	Nov. 4-10	17,208	Nov. 6-12	29,683
Nov. 10-16	28,849	Nov. 11-17	19,793	Nov. 13-19	36,289
Nov. 17-23	<u>26,495</u>	Nov. 18-24	<u>12,013</u>	Nov. 20-26	<u>20,115</u>
<b>Total</b>	<b>277,892</b>		<b>176,255</b>		<b>314,506</b>

**Avocado Shipments  
by  
Type of Container**

	<u>Standard Flats</u>	<u>Multilayer Boxes</u>
Nov. 10-16, 1957	99,429	5,322
Nov. 17-23, 1957	95,700	3,427
Nov. 18-24, 1956	<u>45,167</u>	<u>961</u>

**Distribution  
1957-58 Season**

<u>Period</u>	<u>Total Units Packed</u>	<u>Units for Florida Destinations*</u>	<u>Per Cent for Florida Destinations*</u>
June 1-Sept. 28, 1957	372,486	48,329	13.0
Sept. 29-Oct. 5	72,334	3,847	5.3
Oct. 6-12	71,897	5,230	7.2
Oct. 13-19	105,667	3,924	3.7
Oct. 20-26	83,945	5,259	6.3
Oct. 27-Nov. 2	92,668	5,366	5.8
Nov. 3-9	91,194	6,484	7.1
Nov. 10-16	115,395	5,796	5.0
Nov. 17-23	<u>105,981</u>	<u>6,059</u>	<u>5.7</u>
<b>Total</b>	<b>1,111,567</b>	<b>90,294</b>	<b>8.1</b>

\*Does not include drop lots transported by common or contract carriers.



**AVOCADO ADMINISTRATIVE COMMITTEE**  
Homestead, Florida

1102 North Krome Avenue

Report No. 57/58-27

Telephone CI 7-0848

December 30, 1957

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Summary of Avocado Shipments  
from the  
South Florida Production Area

<u>1957-58 Season</u>		<u>1956-57 Season</u>		<u>1955-56 Season</u>	
<u>Period</u>	<u>Bushels</u>	<u>Period</u>	<u>Bushels</u>	<u>Period</u>	<u>Bushels</u>
Apr. 1-Oct. 26	176,582	Apr. 1-Oct. 27	114,717	Apr. 1-Oct. 29	205,947
Oct. 27-Nov. 2	23,167	Oct. 28-Nov. 3	12,524	Oct. 30-Nov. 5	22,472
Nov. 3-9	22,799	Nov. 4-10	17,208	Nov. 6-12	29,683
Nov. 10-16	28,849	Nov. 11-17	19,793	Nov. 13-19	36,289
Nov. 17-23	26,495	Nov. 18-24	12,013	Nov. 20-26	20,115
Nov. 24-30	14,076	Nov. 25-Dec. 1	21,515	Nov. 27-Dec. 3	25,101
Dec. 1-7	22,945	Dec. 2-8	24,481	Dec. 4-10	24,298
Dec. 8-14	25,035	Dec. 9-15	20,614	Dec. 11-17	23,691
Dec. 15-21	16,455	Dec. 16-22	9,278	Dec. 18-24	12,104
Dec. 22-28	8,213	Dec. 23-29	8,011	Dec. 25-31	16,284
<b>Total</b>	<b>364,616</b>		<b>260,154</b>		<b>415,984</b>

Avocado Shipments  
by  
Type of Container

	<u>Standard Flats</u>	<u>Multilayer Boxes</u>
Dec. 15-21, 1957	56,174	3,216
Dec. 22-28, 1957	24,764	2,696
Dec. 23-29, 1956	29,923	707

Distribution  
1957-58 Season

<u>Period</u>	<u>Total Units Packed</u>	<u>Units for Florida Destinations*</u>	<u>Per Cent for Florida Destinations*</u>
June 1-Oct. 26, 1957	706,329	66,589	9.4
Oct. 27-Nov. 2	92,668	5,366	5.8
Nov. 3-9	91,194	6,484	7.1
Nov. 10-16	115,395	5,796	5.0
Nov. 17-23	105,981	6,059	5.7
Nov. 24-30	56,304	5,150	9.1
Dec. 1-7	91,782	6,735	7.3
Dec. 8-14	100,141	5,762	5.8
Dec. 15-21	65,822	6,795	10.3
Dec. 22-28	32,852	6,013	18.3
<b>Total</b>	<b>1,458,468</b>	<b>120,749</b>	<b>8.2</b>

\*Does not include drop lots transported by common or contract carriers.

**AVOCADO ADMINISTRATIVE COMMITTEE**  
Homestead, Florida

1102 North Krome Avenue

Telephone CI 7-0848

Report No. 57/58-29

January 13, 1958

**Summary of Avocado Shipments  
from the  
South Florida Production Area**

<u>1957-58 Season</u>		<u>1956-57 Season</u>		<u>1955-56 Season</u>	
<u>Period</u>	<u>Bushels</u>	<u>Period</u>	<u>Bushels</u>	<u>Period</u>	<u>Bushels</u>
Apr. 1-Nov. 30	291,968	Apr. 1-Dec. 1	197,770	Apr. 1-Dec. 3	339,607
Dec. 1-7	22,945	Dec. 2-8	24,481	Dec. 4-10	24,298
Dec. 8-14	25,035	Dec. 9-15	20,614	Dec. 11-17	23,691
Dec. 15-21	16,455	Dec. 16-22	9,278	Dec. 18-24	12,104
Dec. 22-28	8,213	Dec. 23-29	8,011	Dec. 25-31	16,284
Dec. 29-Jan. 4	10,404	Dec. 30-Jan. 5	17,411	Jan. 1-7	17,672
Jan. 5-11	24,979	Jan. 6-12	16,974	Jan. 8-14	21,675
<b>Total</b>	<b>399,999</b>		<b>294,539</b>		<b>455,331</b>

**Avocado Shipments  
by  
Type of Container**

	<u>Standard Flats</u>	<u>Multilayer Boxes</u>
Dec. 29-Jan. 4, 1958	30,998	3,539
Jan. 5-11, 1958	79,005	6,970
Jan. 6-12, 1957	62,516	1,793

**Distribution  
1957-58 Season**

<u>Period</u>	<u>Total Units Packed</u>	<u>Units for Florida Destinations*</u>	<u>Per Cent for Florida Destinations*</u>
June 1-Nov. 30, 1957	1,167,871	95,444	8.2
Dec. 1-7	91,782	6,735	7.3
Dec. 8-14	100,141	5,762	5.8
Dec. 15-21	65,822	6,795	10.3
Dec. 22-28	32,852	6,013	18.3
Dec. 29-Jan. 4, 1958	41,615	5,729	13.8
Jan. 5-11	99,915	10,029	10.0
<b>Total</b>	<b>1,599,998</b>	<b>136,507</b>	<b>8.5</b>

\*Does not include drop lots transported by common or contract carriers.

AAC-446

David M. Biggar, Manager  
Avocado Administrative Committee

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AVOCADO ADMINISTRATIVE COMMITTEE  
 1102 North Krome Avenue  
 Homestead, Florida  
 Telephone CI 7-0848

SUMMARY OF AVOCADO SHIPMENTS  
 FROM THE  
 SOUTH FLORIDA PRODUCTION AREA

June 1, 1957, through January 11, 1958

As derived from inspection certificates issued by the  
 United States Department of Agriculture in cooperation  
 with the Citrus and Vegetable Inspection Division of  
 the Florida Department of Agriculture.

<u>Shipped to Florida Destinations</u>		<u>Shipped to Out of State Destinations</u>		<u>Total Shipped</u>	
<u>Bushels</u>	<u>%</u>	<u>Bushels</u>	<u>%</u>	<u>Bushels</u>	<u>%</u>
34,127	8.5	365,872	91.5	399,999	100

AAC-448

David M. Biggar, Manager  
 Avocado Administrative Committee

OIL CONTENT TESTS OF FLORIDA AVOCADOS MADE AT EXPERIMENT  
STATION, HOMESTEAD, FLORIDA, AT REQUEST OF FLORIDA LIME  
& AVOCADO GROWERS, INC.

## 1954-55 Season

Variety	Grove	Size of Sample	Date Picked	Date Tested	% Oil
Lula	Piowaty	5	Oct. 14, 1954	Oct. 14, 1954	7.2
Lula	Aladay	5	Oct. 14	Oct. 14	5.5
Lula	Higgins	5	Oct. 14	Oct. 14	5.8
Lula	Biggers	5	Oct. 14	Oct. 14	8.0
Lula	V. Johnson	--	Oct. 13	Oct. 14	6.2
Lula	Higgins	5	Oct. 18	Oct. 18	8.3
Lula	Kent	5	Oct. 18	Oct. 18	6.8
Lula	Kent	5	Oct. 18	Oct. 18	6.9
Lula	--	5	Oct. 18	Oct. 18	6.9
Lula	McRae	5	Oct. 18	Oct. 18	5.2
Lula	Curtis	5	Oct. 18	Oct. 19	7.8
Lula	Curtis	5	Oct. 18	Oct. 19	6.7
Lula	Kip	5	Oct. 18	Oct. 19	6.8
Lula	Womecto	5	Oct. 19	Oct. 20	6.7
Lula	Kersten	6	Oct. 19	Oct. 20	6.6
Lula	Kersten	6	Oct. 19	Oct. 20	6.9
Lula	McBride	5	Oct. 19	Oct. 20	7.0
Lula	Worland	5	Oct. 19	Oct. 21	8.3
Booth 8	--	5	Oct. 26	Oct. 26	7.1
Lula	McMillan	5	Oct. 27	Oct. 28	7.9
Lula	Womecto	5	Oct. 27	Oct. 28	7.1
Lula	Curtis	5	Oct. 27	Oct. 28	9.2
Lula	Nichol	5	Oct. 27	Oct. 28	7.4
Lula	FLAG	5	Oct. 27	Oct. 28	7.8
Lula	Curtis	5	Oct. 27	Oct. 28	7.4
Lula	Gayton	5	Oct. 27	Oct. 29	9.0
Lula	Lillis	5	Oct. 27	Oct. 29	8.1
Lula	Curtis	5	Oct. 27	Oct. 29	8.8
Lula	Higgins	6	Oct. 28	Oct. 29	7.6
Blakeman	DeGuise	6	Oct. 28	Oct. 29	6.3
Blair	Aladay	5	Oct. 28	Oct. 29	8.1
Hall	--	--	Nov. 1	Nov. 1	6.1
Lula	--	--	Nov. 1	Nov. 1	7.6
Booth 1	--	--	Nov. 1	Nov. 1	8.8
Taylor	--	--	Nov. 1	Nov. 1	7.5
Lula	Kip	5	Nov. 1	Nov. 2	7.1
Booth 7	Kip	5	Nov. 1	Nov. 2	5.7
Hickson	--	5	Nov. 9	Nov. 10	8.3
Booth 3	--	9	Nov. 8	Nov. 10	9.6
Booth 3	English	5	Nov. 12	Nov. 12	7.2
Booth 7	English	5	Nov. 12	Nov. 12	7.4
Booth 3	FLAG	5	Nov. 12	Nov. 12	9.4
Booth	Piowaty	5	Nov. 12	Nov. 12	7.8
Booth 7	--	4	Nov. 12	Nov. 12	8.4
Booth 3	McBride	5	Nov. 12	Nov. 12	7.4
Blakeman	DeGuise	5	Nov. 17	Nov. 18	9.1

*Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Booth 8	9-15	14	--	9-27	12	--	--	--	--	10-10
Booth 7	10-15	16	--	11-1	--	--	--	--	--	11-1
Hickson	10-15	14	--	11-1	--	--	--	--	--	11-1
Blair	10-18	16	--	11-1	--	--	--	--	--	11-1
Lula	10-18	16	--	11-1	--	--	--	--	--	11-1
Blakeman	11-1	--	--	11-1	--	--	--	--	--	11-1
Hall	11-1	18	--	12-1	--	--	--	--	--	12-1
Taylor	11-1	12	--	11-15	--	--	--	--	--	11-15
Booth 1	11-15	16	--	12-1	--	--	--	--	--	12-1
Booth 3	11-5	14	--	12-1	--	--	--	--	--	12-1

\*Shipping dates authorized by regulations of U. S. Secretary of Agriculture under  
South Florida Federal Marketing Agreement

[fol. 324]

PLAINTIFFS' EXHIBIT 12

# UNIVERSITY OF FLORIDA SUBTROPICAL EXPERIMENT STATION

OIL CONTENT TESTS OF FLORIDA AVOCADOS MADE AT EXPERIMENT STATION, HOMESTEAD, FLORIDA, AT REQUEST OF FLORIDA LIME & AVOCADO GROWERS, INC.

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[fol. 325]

## 1955-56 Season

<u>Variety</u>	<u>Grove</u>	<u>Size of Sample</u>	<u>Date Picked</u>	<u>Date Tested</u>	<u>% Oil</u>
Lula	--	5	Oct. 17, 1955	Oct. 17, 1955	6.9
Lula	Higgins	4	Oct. 17	Oct. 17	6.3
Lula	Higgins	4	Oct. 17	Oct. 17	5.7
Lula	--	5	Oct. 20	Oct. 20	7.8
Taylor	Heuer	7	Oct. 21	Oct. 21	6.9
Lula	2	5	Oct. 21	Oct. 24	8.8
Lula	1	5	Oct. 21	Oct. 24	9.2
Hickson	--	5	Nov. 9	Nov. 9	6.8
Lula	FLAG	5	Nov. 10	Nov. 10	7.2
Lula	Drew	5	Nov. 10	Nov. 10	9.8
Lula	McBride	4	--	Nov. 10	11.7
Hickson	--	5	Nov. 10	Nov. 10	7.4
Lula	--	5	Nov. 10	Nov. 10	5.8
Lula	1	5	--	Nov. 14	8.8
Lula	2	5	--	Nov. 14	8.0
Lula	3	5	--	Nov. 14	10.8
Lula	4	5	--	Nov. 14	7.1
Lula	5	5	--	Nov. 14	9.7
Lula	6	5	Nov. 14	Nov. 15	7.7
Lula	7	5	Nov. 14	Nov. 15	8.3
Booth 7	--	5	Nov. 14	Nov. 15	7.4
Lula	8	5	Nov. 14	Nov. 15	8.3
Lula	1	6	Nov. 18	Nov. 18	7.4
Lula	1	1	Nov. 18	Nov. 18	6.4
Lula	1	1	Nov. 18	Nov. 18	7.9
Lula	2	6	Nov. 18	Nov. 18	8.1
Lula	2	1	Nov. 18	Nov. 18	6.3
Lula	2	1	Nov. 18	Nov. 18	7.5
Blakeman	--	5	Nov. 18	Nov. 18	3.7
Lula	Curtis	5	Nov. 23	Nov. 23	10.0
Lula	Kip	5	Nov. 23	Nov. 23	9.3
Blakeman	DeGuise	5	Nov. 30	Nov. 30	4.4
Booth 7	--	10	Dec. 5	Dec. 5	7.2
Booth 7	--	1	Dec. 5	Dec. 5	7.2
Booth 7	--	5	Dec. 8	Dec. 8	7.2
Taylor	--	1	Jan. 3, 1956	Jan. 3, 1956	12.8
Taylor	--	8	Jan. 3	Jan. 3	11.0
Taylor	--	1	Jan. 3	Jan. 3	10.4

*Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Lula(	10-3	18	3 10/16	10-17	16	3 7/16	--	--	--	--
(	--	--	--	10-31	14	3 4/16	11-14	11	2 15/16	12-12
Booth 7	10-10	16	3 9/16	10-24	14	3 7/16	11-7	10	3 1/16	11-21
Hickson	10-17	14	3 4/16	10-31	10	2 15/16	11-14	8	2 12/16	12-5
Taylor	11-7	14	3 5/16	11-28	12	3 2/16	12-12	9	2 13/16	1-2



UNIVERSITY OF FLORIDA SUBTROPICAL EXPERIMENT STATION

OIL CONTENT TESTS OF FLORIDA AVOCADOS MADE AT EXPERIMENT  
STATION, HOMESTEAD, FLORIDA, AT REQUEST OF FLORIDA LIME  
& AVOCADO GROWERS, INC.

1956-57 Season

Variety	Grove	Size of Sample	Date Picked	Date Tested	% Oil
Lula	--	6	Oct. 29, 1956	Oct. 30, 1956	5.7
Lula	--	6	Nov. 12	Nov. 12	6.8
Lula	1	6	Nov. 14	Nov. 15	7.4
Lula	2	6	Nov. 14	Nov. 15	6.8
Lula	3	6	Nov. 14	Nov. 15	7.6
Lula	Higgins	5	Nov. 15	Nov. 15	7.4
Lula	6	6	Nov. 15	Nov. 15	6.8
Lula	5	6	Nov. 14	Nov. 16	5.8
Lula	4	6	Nov. 14	Nov. 16	8.6
Hall	--	2	Nov. 15	Nov. 16	6.4
Lula	1	6	Nov. 19	Nov. 20	7.2
Lula	2	6	Nov. 19	Nov. 20	8.6
Lula	3	6	Nov. 19	Nov. 20	6.6
Lula	4	6	Nov. 19	Nov. 20	6.8
Lula	1	6	Nov. 26	Nov. 26	6.1
Lula	2	7	Nov. 26	Nov. 26	7.6
Lula	3	7	Nov. 26	Nov. 26	7.5
Lula	4	7	Nov. 26	Nov. 26	7.6
Lula	5	6	Nov. 26	Nov. 26	7.4
Lula	1	6	Nov. 27	Nov. 27	6.8
Lula	2	7	Nov. 27	Nov. 27	7.9
Lula	1	6	Nov. 29	Nov. 29	6.9
Lula	2	6	Nov. 29	Nov. 29	7.2
Lula	3	6	Nov. 29	Nov. 29	8.0
Lula	4	6	Nov. 29	Nov. 29	7.3
Lula	1	6	Dec. 3	Dec. 3	8.0
Lula	2	6	Dec. 3	Dec. 3	7.8
Lula	3	6	Dec. 3	Dec. 3	6.8
Lula	4	6	Dec. 3	Dec. 3	8.7
Lula	1	6	Dec. 4	Dec. 4	9.1
Lula	2	6	Dec. 4	Dec. 4	8.5
Lula	3	6	Dec. 4	Dec. 4	8.5
Lula	4	6	Dec. 4	Dec. 4	6.7
Booth 1	Higgins	6	Dec. 4	Dec. 4	10.0
Booth 1	Higgins	7	Dec. 4	Dec. 4	9.3
Lula	Higgins	6	Dec. 4	Dec. 5	8.0
Lula	5	6	Dec. 4	Dec. 5	7.4
Lula	6	6	Dec. 5	Dec. 5	7.2
Lula	7	6	Dec. 5	Dec. 5	8.6
Lula	--	6	Dec. 6	Dec. 6	8.3
Taylor	Higgins	6	Dec. 10	Dec. 10	7.8
Taylor	Higgins	6	Dec. 10	Dec. 10	7.7

SHIPPING DATES AUTHORIZED BY REGULATIONS OF U. S. SECRETARY OF AGRICULTURE  
UNDER SOUTH FLORIDA FEDERAL MARKETING AGREEMENT

Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Lula(	10-8	18	3 10/16	10-22	16	3 7/16	--	--	--	--
(	--	--	--	11-5	14	3 4/16	12-3	11	2 15/16	12-10
Booth 1	11-19	16	3 11/16	12-3	14	3 8/16	12-17	10	3 1/16	1-7
Taylor	11-19	14	3 4/16	12-3	12	3 2/16	12-17	9	2 13/16	1-7



# UNIVERSITY OF FLORIDA SUBTROPICAL EXPERIMENT STATION

## OIL CONTENT TESTS OF FLORIDA AVOCADOS MADE AT EXPERIMENT STATION, HOMESTEAD, FLORIDA, AT REQUEST OF FLORIDA LIME & AVOCADO GROWERS, INC.

1957-58 Season

<u>Variety</u>	<u>Grove</u>	<u>Size of Sample</u>	<u>Date Picked</u>	<u>Date Tested</u>	<u>% Oil</u>
Lula	1	8	--	Oct. 8, 1957	5.6
Lula	2	6	--	Oct. 8	6.6
Lula	1	6	Oct. 28, 1957	Oct. 28	6.8
Lula	2	6	Oct. 28	Oct. 28	6.8
Lula	1	6	Nov. 6	Nov. 6	7.4
Lula	2	6	Nov. 6	Nov. 6	7.0
Lula	3	6	Nov. 6	Nov. 6	6.8
Lula	4	6	Nov. 6	Nov. 6	7.2
Lula	1	6	Nov. 12	Nov. 12	8.2
Lula	1	6	Nov. 12	Nov. 13	8.7
Lula	2	6	Nov. 12	Nov. 13	8.5
Lula	3	6	Nov. 12	Nov. 13	8.5
Booth 8	1	6	Nov. 13	Nov. 13	5.6
Booth 8	2	6	Nov. 13	Nov. 13	7.1
Booth 8	3	6	Nov. 13	Nov. 13	6.8
Booth 8	4	6	Nov. 13	Nov. 13	6.8
Lula	1	6	Nov. 12	Nov. 14	8.5
Lula	2	6	--	Nov. 14	6.6
Lula	3	6	--	Nov. 14	8.2
Lula	4	6	--	Nov. 14	8.9
Lula	5	6	--	Nov. 14	7.6
Lula	1	6	Nov. 25	Nov. 26	8.5
Lula	2	6	Nov. 25	Nov. 26	8.0
Lula	3	6	Nov. 25	Nov. 26	8.6

### SHIPPING DATES AUTHORIZED BY REGULATIONS OF U. S. SECRETARY OF AGRICULTURE UNDER SOUTH FLORIDA FEDERAL MARKETING AGREEMENT

<u>Variety</u>	<u>Date A</u>	<u>Min. Wt.</u>	<u>Min. Diam.</u>	<u>Date B</u>	<u>Min. Wt.</u>	<u>Min. Diam.</u>	<u>Date C</u>	<u>Min. Wt.</u>	<u>Min. Diam.</u>	<u>Date D</u>
Booth 8(	9-16	15	3 6/16	9-30	13	3 4/16	--	--	--	--
(	--	--	--	10-14	11	3 1/16	10-28	10	2 15/16	11-18
Lula(	10-7	18	3 10/16	10-21	16	3 7/16	--	--	--	--
(	--	--	--	11-4	14	3 4/16	11-18	11	2 15/16	12-9

## UNIVERSITY OF FLORIDA SUBTROPICAL EXPERIMENT STATION

OIL CONTENT TESTS OF FLORIDA AVOCADOS MADE AT EXPERIMENT  
STATION, HOMESTEAD, FLORIDA, AT REQUEST OF SOUTH FLORIDA  
GROWERS ASSN., INC.

## 1954-55 Season

Variety	Grove	Size of Sample	Date Picked	Date Tested	% Oil
Hickson	Chandler	--	Oct. 14, 1954	Oct. 14, 1954	8.1
Hickson	--	--	Oct. 14	Oct. 14	6.7
Lula	Chandler	--	Oct. 13	Oct. 14	6.3
Lula	Chandler	--	Oct. 13	Oct. 14	5.2
Camp	Camp	--	Oct. 13	Oct. 14	7.3
Lula	English	5	Oct. 19	Oct. 21	7.2
Lula	Chandler	--	Oct. 20	Oct. 21	6.5
Hickson	Chandler	--	Oct. 20	Oct. 21	7.6
Hickson	Kendall	--	Oct. 20	Oct. 21	7.9
Lula	Lova	5	Oct. 21	Oct. 21	5.7
Lula	McMillan	--	Oct. 20	Oct. 21	7.0
Camp	Camp	--	Oct. 20	Oct. 21	6.4
Lula	Chandler	--	Oct. 20	Oct. 21	6.3
Lula	Peters	--	Oct. 20	Oct. 21	7.3
Hickson	Kendall	5	Oct. 27	Oct. 27	8.4
Hickson	Chandler	5	Oct. 27	Oct. 27	9.6
Lula	5A	5	Oct. 27	Oct. 27	5.5
Lula	Harrison	5	Oct. 27	Oct. 27	6.9
Lula	Princeton	5	Oct. 27	Oct. 28	6.1
Lula	Jeron	5	Oct. 27	Oct. 28	7.7
Lula	Peters	5	Oct. 27	Oct. 28	7.8
Vaca	Krome	--	Oct. 28	Oct. 29	8.2
Lula	Krome	--	Oct. 29	Oct. 29	4.7
Lula	Krome	--	Oct. 29	Oct. 29	5.0
Lula	Krome	--	Oct. 29	Oct. 29	5.5
Lula	Krome	--	Oct. 29	Oct. 29	5.7
Lula	Futch	9	--	Nov. 2	6.3
Booth 7	Futch	8	--	Nov. 2	4.1
Lula	--	--	Nov. 1	Nov. 3	6.4
Lula	--	--	Nov. 1	Nov. 3	6.0
Booth 8	--	--	Nov. 1	Nov. 3	5.5
Booth 8	--	--	Nov. 1	Nov. 3	5.7
Lula	Harrison	5	Nov. 4	Nov. 4	6.6
Lula	Princeton	5	Nov. 4	Nov. 4	5.7
Lula	Peters	5	Nov. 4	Nov. 5	8.3
Lula	Chandler 5A	5	Nov. 4	Nov. 5	6.5
Lula	Jeron	5	Nov. 4	Nov. 5	7.8
Lula	McMillan	5	Nov. 4	Nov. 5	7.7
Booth 7	--	11	Nov. 8	Nov. 10	7.7
Booth 7	Futch	--	--	--	--
Lula	Kinard	2	Nov. 10	Nov. 12	9.6
Camp	Camp	8	--	Nov. 17	9.2
Lula	McMillan	5	Nov. 17	Nov. 18	8.3
Lula	Kinard	10	Nov. 18	Nov. 18	9.6
Lula	Kinard	9	Nov. 18	Nov. 18	9.0
Lula	Kinard	5	Nov. 18	Nov. 18	8.8
Lula	Harrison	5	Nov. 17	Nov. 18	8.3
Lula	Ch 5A	5	Nov. 17	Nov. 18	6.7
Taylor	Ch 5A	5	Nov. 17	Nov. 18	8.8
Booth 7	Cox	6	Nov. 17	Nov. 18	9.5
Lula	Peters	5	Nov. 17	Nov. 18	8.8
Lula	Jeron	5	Nov. 17	Nov. 18	9.2
Booth 3	--	5	Nov. 17	Nov. 19	10.0

*Variety	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Booth 8	9-15	14	--	9-27	12	--	--	10-10
Vaca	10-6	14	--	10-20	--	--	--	10-20
Booth 7	10-15	16	--	11-1	--	--	--	11-1
Hickson	10-15	14	--	11-1	--	--	--	11-1
Lula	10-18	16	--	11-1	--	--	--	11-1
Taylor	11-1	12	--	11-15	--	--	--	11-15
Booth 3	11-5	14	--	12-1	--	--	--	12-1

\*Shipping dates authorized by regulations of U. S. Secretary of Agriculture under  
South Florida Federal Marketing Agreement

[fol. 328]

PLAINTIFFS' EXHIBIT 13

UNIVERSITY OF FLORIDA SUBTROPICAL EXPERIMENT STATION

OIL CONTENT TESTS OF FLORIDA AVOCADOS MADE AT EXPERIMENT  
STATION, HOMESTEAD, FLORIDA, AT REQUEST OF SOUTH FLORIDA  
GROWERS ASSN., INC.

1955-56 Season

<u>Variety</u>	<u>Grove</u>	<u>Size of Sample</u>	<u>Date Picked</u>	<u>Date Tested</u>	<u>% Oil</u>
Booth 3	Camp	6	Nov. 19, 1955	Nov. 19, 1955	6.9
Booth 3	Camp	6	Nov. 14	Nov. 19	8.0
Lula	Camp	6	Nov. 23	Nov. 23	8.0
Booth 3	Camp	6	Nov. 23	Nov. 23	6.2

<u>*Variety</u>	<u>Date A</u>	<u>Min. Wt.</u>	<u>Min. Diam.</u>	<u>Date B</u>	<u>Min. Wt.</u>	<u>Min. Diam.</u>	<u>Date C</u>	<u>Min. Wt.</u>	<u>Min. Diam.</u>	<u>Date D</u>
Lula(	10-3	18	3 10/16	10-17	16	3 7/16	--	--	--	--
(	--	--	--	10-31	14	3 4/16	11-14	11	2 15/16	12-12
Booth 3	10-31	16	3 10/16	11-14	14	3 8/16	11-28	10	3 1/16	12-12

\*Shipping dates authorized by regulations of U. S. Secretary of Agriculture under  
South Florida Federal Marketing Agreement

UNIVERSITY OF FLORIDA SUBTROPICAL EXPERIMENT STATION

OIL CONTENT TESTS OF FLORIDA AVOCADOS MADE AT EXPERIMENT  
STATION, HOMESTEAD, FLORIDA, AT REQUEST OF SOUTH FLORIDA  
GROWERS ASSN., INC.

1956-57 Season

Variety	Grove	Size of Sample	Date Picked	Date Tested	% Oil
Lula	Sagehorn	6	Nov. 9, 1956	Nov. 13, 1956	8.3
Vaca	Krome	10	Nov. 12	Nov. 13	7.1
Booth 7	Krome	10	Nov. 12	Nov. 13	4.4
Lula	1	6	Nov. 19	Nov. 21	7.4
Lula	--	6	Nov. 21	Nov. 21	6.1
Lula	--	6	Nov. 21	Nov. 21	6.4
Lula	McMillan	6	Nov. 19	Nov. 21	7.6
Lula	Serlecte	6	Nov. 19	Nov. 21	8.6
Lula	Warwick	6	Nov. 20	Nov. 21	8.8
Lula	J-F	6	Nov. 20	Nov. 23	7.4
Lula	Sagehorn	6	Nov. 21	Nov. 23	7.7
Lula	Melfeld	6	Nov. 26	Nov. 26	8.0
Lula	J-F	6	Nov. 27	Nov. 28	9.8
Booth 1	J-F	6	Nov. 27	Nov. 28	9.9
Booth 1	Rivers	6	Nov. 28	Nov. 28	8.4
Booth 3	--	6	Nov. 28	Nov. 28	9.2
Booth 1	Camp	6	Nov. 28	Nov. 28	9.4
Lula	Camp	6	Nov. 28	Nov. 28	5.8
Taylor	Camp	6	Nov. 28	Nov. 28	8.2
Booth 3	Barnum	6	Dec. 4	Dec. 4	7.6
Lula	6	6	Dec. 5	Dec. 5	9.0
Lula	5	6	Dec. 5	Dec. 5	9.2
Booth 7	7	6	Dec. 5	Dec. 5	5.1
Booth 7	8	6	Dec. 5	Dec. 5	7.1
Booth 7	9	6	Dec. 5	Dec. 5	5.0
Lula	1	6	Dec. 5	Dec. 5	7.8
Lula	2	6	Dec. 5	Dec. 5	6.7
Lula	3	6	Dec. 5	Dec. 5	9.2
Lula	4	6	Dec. 5	Dec. 5	8.6
Vaca	Krome	6	Dec. 5	Dec. 6	11.5
Lula	1	6	Dec. 5	Dec. 6	11.2
Lula	3	6	Dec. 5	Dec. 6	7.6
Booth 6	6	6	Dec. 6	Dec. 6	6.0
Booth 3	5	6	Dec. 6	Dec. 6	8.8
Booth 1	7	6	Dec. 6	Dec. 6	9.7
Lula	7	6	Dec. 6	Dec. 7	7.6
Lula	6	6	Dec. 6	Dec. 7	6.7
Taylor	5	6	Dec. 7	Dec. 7	9.0
Hickson	3	6	Dec. 7	Dec. 7	7.8
Booth 3	2	6	Dec. 7	Dec. 7	7.2
Lula	2	6	Dec. 7	Dec. 7	7.2
Booth 1	4	6	Dec. 7	Dec. 7	7.4
Lula	9	6	Dec. 7	Dec. 7	8.8
Lula	8	6	Dec. 7	Dec. 7	7.7
Lula	10	6	Dec. 7	Dec. 7	7.8
Lula	Camp	6	Dec. 10	Dec. 10	7.9
Booth 7B	--	6	Dec. 13	Dec. 14	9.6
Booth 3	--	6	Dec. 13	Dec. 14	10.2
Collinson	--	6	Dec. 14	Dec. 14	8.4
Herman	--	6	Dec. 14	Dec. 14	8.1
Collinson	PH	6	Dec. 14	Dec. 14	7.6
Lula	Camp	6	Dec. 17	Dec. 17	6.8
Lula	Camp	6	Dec. 17	Dec. 18	6.6

SHIPPING DATES AUTHORIZED BY REGULATIONS OF U. S. SECRETARY OF AGRICULTURE  
UNDER SOUTH FLORIDA FEDERAL MARKETING AGREEMENT

Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Lula	10-8	18	3 10/16	10-22	16	3 7/16	--	--	--	--
Booth 7	10-15	16	3 10/16	10-29	14	3 8/16	11-12	10	3 2/16	12-3
Vaca	10-15	16	3 9/16	10-29	14	3 7/16	11-12	10	3 0/16	12-3
Hickson	10-22	14	3 4/16	11-5	11	3 0/16	11-19	9	2 13/16	12-10
Collinson	10-22	16	3 11/16	11-5	14	3 8/16	11-19	10	3 1/16	12-10
Herman	11-5	16	3 9/16	11-19	14	3 7/16	12-3	10	3 1/16	12-24
Booth 7B	11-12	18	3 12/16	11-26	15	3 9/16	12-10	11	3 3/16	12-31
Booth 1	11-19	16	3 11/16	12-3	14	3 8/16	12-17	10	3 1/16	1-7
Booth 3	11-19	16	3 9/16	12-3	14	3 7/16	12-17	10	3 1/16	1-7
Taylor	11-19	14	3 4/16	12-3	12	3 2/16	12-17	9	2 13/16	1-7

[Col. 330]



UNIVERSITY OF FLORIDA SUBTROPICAL EXPERIMENT STATION

OIL CONTENT TESTS OF FLORIDA AVOCADOS MADE AT EXPERIMENT  
STATION, HOMESTEAD, FLORIDA, AT REQUEST OF SOUTH FLORIDA  
GROWERS ASSN., INC.

[fol. 331]

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1957-58 Season

<u>Variety</u>	<u>Grove</u>	<u>Size of Sample</u>	<u>Date Picked</u>	<u>Date Tested</u>	<u>% Oil</u>
Lula	1	6	Oct. 31, 1957	Nov. 1, 1957	6.8
Lula	2	6	Oct. 31	Nov. 1	6.6
Lula	3	6	Oct. 31	Nov. 1	8.3
Lula	1	6	Nov. 4	Nov. 4	8.7
Lula	2	6	Nov. 4	Nov. 4	7.8
Lula	3	6	Nov. 4	Nov. 4	8.1
Lula	3	6	Nov. 5	Nov. 5	8.7
Lula	2	6	Nov. 5	Nov. 5	7.7
Lula	1	6	Nov. 5	Nov. 5	7.6
Lula	1	6	Nov. 6	Nov. 6	8.9
Lula	2	6	Nov. 6	Nov. 6	7.5
Lula	3	6	Nov. 6	Nov. 6	7.3
Lula	1	6	Nov. 7	Nov. 8	7.8
Lula	2	6	Nov. 7	Nov. 8	8.9
Lula	3	6	Nov. 7	Nov. 8	8.8
Lula	4	6	Nov. 7	Nov. 8	8.6
Lula	5	6	Nov. 7	Nov. 8	9.1
Lula	6	6	Nov. 7	Nov. 8	8.2
Booth 7	1	6	Nov. 12	Nov. 12	8.1
Lula	2	6	Nov. 12	Nov. 12	8.2
Lula	3	6	Nov. 12	Nov. 12	8.7
Lula	4	6	Nov. 12	Nov. 12	7.8
Lula	5	6	Nov. 12	Nov. 12	7.8
Booth 3	6	6	Nov. 12	Nov. 12	9.1
Booth 8	--	6	--	Nov. 18	7.3
Booth 8	--	6	--	Nov. 18	8.2
Booth 8	--	6	--	Nov. 18	6.8

SHIPPING DATES AUTHORIZED BY REGULATIONS OF U. S. SECRETARY OF AGRICULTURE  
UNDER SOUTH FLORIDA FEDERAL MARKETING AGREEMENT

<u>Variety</u>	<u>Date</u>	<u>Min.</u>	<u>Min.</u>	<u>Date</u>	<u>Min.</u>	<u>Min.</u>	<u>Date</u>	<u>Min.</u>	<u>Min.</u>	<u>Date</u>
	<u>A</u>	<u>Wt.</u>	<u>Diam.</u>	<u>B</u>	<u>Wt.</u>	<u>Diam.</u>	<u>C</u>	<u>Wt.</u>	<u>Diam.</u>	<u>D</u>
Booth 8(	9-16	15	3 6/16	9-30	13	3 4/16	--	--	--	--
(	--	--	--	10-14	11	3 1/16	10-28	10	2 15/16	11-18
Lula(	10-7	18	3 10/16	10-21	16	3 7/16	--	--	--	--
(	--	--	--	11-4	14	3 4/16	11-18	11	2 15/16	12-9
Booth 7	10-14	16	3 10/16	10-28	14	3 8/16	11-11	11	3 2/16	12-2
Booth 3	11-11	16	3 9/16	11-25	14	3 7/16	12-9	10	3 1/16	12-31

**AVOCADO SHIPPING DATES**  
1956-57 Season

Variety	Date A	Min Wt	Min Dia	Date B	Min Wt	Min Dia	Date C	Min Wt	Min Dia	Date D
Fuchs	6-18	12	3 1/16	7-2	10	2 13/16	7-16	8	2 9/16	8-6
Pollock	7-2	18	3 10/16	7-16	15	3 6/16	7-30	12	3 1/16	8-27
Simmonds	7-2	16	3 9/16	7-16	14	3 7/16	7-30	12	3 4/16	8-27
Nadir	7-2	14	3 5/16	7-16	12	3 2/16	7-30	9	2 12/16	8-27
Hardee	7-2	16	3 5/16	7-16	14	3 2/16	7-30	10	2 12/16	8-27
Trapp	7-23	14	3 9/16	8-6	12	3 7/16	8-20	10	3 3/16	9-17
Waldin	7-30	16	3 9/16	8-13	14	3 6/16	8-27	10	3 1/16	10-15
Peterson	8-6	12	3 6/16	8-20	10	3 2/16	9-3	8	2 14/16	9-24
Pinelli	8-20	18	--	8-27	16	--	9-3	12	--	9-24
Tonnage	8-20	14	--	8-27	12	--	9-3	10	--	9-24
Fairchild	8-20	16	3 10/16	9-3	14	3 7/16	9-17	10	3 0/16	10-1
(Booth 8	9-17	15	3 6/16	9-24	13	3 4/16	10-15	11	3 1/16	--
(Booth 8	--	--	--	--	--	--	11-5	9	2 14/16	11-26
Nirody	9-17	18	3 15/16	10-1	15	3 11/16	10-15	10	3 3/16	11-5
Simpson	10-1	16	--	10-15	14	--	10-29	10	--	11-19
(Lula	10-8	18	3 10/16	10-22	16	3 7/16	11-5	14	3 4/16	--
(Lula	--	--	--	--	--	--	11-5	11	2 15/16	12-10
Rue	10-8	30	4 3/16	10-15	24	3 15/16	10-29	18	3 9/16	11-12
Black Prince	10-8	16	--	10-22	14	--	11-5	10	--	11-26
Booth 7	10-15	16	3 10/16	10-29	14	3 8/16	11-12	10	3 2/16	12-3
Sherman	10-15	16	--	10-29	14	--	11-12	10	--	12-3
Vaca	10-15	16	3 9/16	10-29	14	3 7/16	11-12	10	3 0/16	12-3
Marcus	10-15	32	--	--	--	--	--	--	--	11-26
Hickson	10-22	14	3 4/16	11-5	11	3 0/16	11-19	9	2 13/16	12-10
Collinson	10-22	16	3 11/16	11-5	14	3 8/16	11-19	10	3 1/16	12-10
Avon	10-22	14	3 8/16	11-5	12	3 5/16	11-19	9	2 15/16	12-10
Booth 5	10-22	16	3 11/16	11-5	14	3 9/16	11-19	9	3 1/16	12-10
Blair	10-22	16	--	11-5	14	--	11-19	9	--	12-10
Nelson	10-22	14	3 8/16	11-5	12	3 5/16	11-19	9	2 15/16	12-10
Monroe	10-29	24	--	11-26	20	--	12-17	14	--	1-7
Hall	11-5	20	3 9/16	11-19	16	3 5/16	12-3	14	3 3/16	12-24
Herman	11-5	16	3 9/16	11-19	14	3 7/16	12-3	10	3 1/16	12-24
Winslowson	11-5	18	3 14/16	11-19	16	3 12/16	12-3	10	3 2/16	12-24
Booth 10	11-5	16	--	11-19	14	--	12-3	9	--	12-24
Booth 11	11-5	16	--	11-19	14	--	12-3	9	--	12-24
Ajax(Booth 7B)	11-12	18	3 12/16	11-26	15	3 9/16	12-10	11	3 3/16	12-31
Booth 3	11-19	16	3 9/16	12-3	14	3 7/16	12-17	10	3 1/16	1-7
Booth 1	11-19	16	3 11/16	12-3	14	3 8/16	12-17	10	3 1/16	1-7
Taylor	11-19	14	3 4/16	12-3	12	3 2/16	12-17	9	2 13/16	1-7
Dunedin	11-19	16	3 10/16	12-3	14	3 8/16	12-17	9	2 15/16	1-7
Choquette	11-26	24	--	12-10	18	--	12-31	14	--	1-21
Linda	12-10	18	--	12-24	15	--	1-7	12	--	1-21
Byars-1	12-10	16	--	12-24	14	--	1-7	9	--	1-28
Nabal	12-10	14	3 8/16	12-24	12	3 5/16	1-7	8	2 14/16	1-28
Wagner	12-17	12	3 5/16	12-31	10	3 2/16	1-14	8	2 14/16	2-4
Schmidt	1-28	16	--	2-11	14	--	--	--	--	2-25
Itzama	2-25	--	--	--	--	--	--	--	--	2-25

Date "A" No fruit may be shipped before this date.

Date "D" No restrictions on size or weight after this date.

Where a minimum weight and minimum diameter are given, fruit which meets either standard may be shipped.

All weights in ounces, diameters in inches.

Schedule for shipment of seedlings, un-named varieties and varieties not listed elsewhere in the regulations:

West Indian Type: None before June 1.

June 1 to June 18, none smaller than 16 oz.

June 18 to July 16, none smaller than 14 oz.

July 16 to Sept. 10, none smaller than 12 oz.

After Sept. 10, no restrictions.

Guatemalan Type: None before Sept. 3.

and Guatemalan x Sept. 3 to Oct. 1, none smaller than 14 oz.

W. Indian Hybrids: Oct. 1 to Dec. 17, none smaller than 12 oz.

After Dec. 17, no restrictions.

Exceptions applicable to seedlings and unlisted varieties: Avocados which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped, without regard to weight, if the exterior of the seedcoat is of a brown color which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.

This schedule voids and supersedes the schedules shown on AAC-234 and AAC-247.

AAC-267



**AVOCADO ADMINISTRATIVE COMMITTEE**  
1102 North Krome Avenue  
Homestead, Florida  
Telephone Circle 7-0848

[Vol. 333]

380

Bulletin No. 57/58-2

May 15, 1957

To: All Growers and Handlers of Avocados Grown in South Florida

Subject: Seedling Maturity Regulations Recommended; Assessment Rate Reduced

Your Avocado Administrative Committee met on Tuesday, May 14th, for the announced purpose of considering regulations for recommendation to the Secretary of Agriculture. Action was taken at this meeting to recommend the following maturity restrictions:

1. Prohibit the shipment of all varieties of avocados listed in regulations governing last season's operations until such time as dates, weights and/or sizes can be established for the individual varieties (schedules for Fuchs, Pollocks, Simmonds and other summer varieties to be established at the June 11th meeting).
2. Restrict the movement of West Indian type seedlings and unlisted varieties as follows:

None to be shipped before June 3  
June 3 through June 16 - 16 oz. minimum weight  
June 17 through July 14 - 14 oz. minimum weight  
July 15 through September 8 - 12 oz. minimum weight  
On and after September 9 - no size restrictions

(Provided that avocados of the seedling or unlisted variety category which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped, without regard to weight, if the exterior of the seedcoat is of a brown color which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.)

An operating budget of \$13,420 was recommended by the Committee for the 1957-58 season, to be financed by an assessment of 3 cents per bushel applicable to all avocados shipped. This assessment rate reflects a reduction by 25 per cent of the assessment rate applicable during previous seasons.

Action has also been taken to eliminate cull avocados from early shipments from Florida. The Committee was polled concerning grade restrictions and has recommended to the Secretary of Agriculture that he prohibit the shipment of avocados which fail to meet the minimum requirements of the Number Two Grade, including standard pack provisions.

The next regular meeting of the Avocado Administrative Committee has been scheduled for 9:30 A. M., June 11, 1957, at the office of the Agricultural Agent of Dade County at Homestead, Florida. All meetings are open to the public and all interested persons are urged to attend and participate in the discussions.

David M. Biggar, Manager  
Avocado Administrative Committee

AAC-361

PLAINTIFFS' EXHIBIT 15

**AVOCADO ADMINISTRATIVE COMMITTEE**  
1102 North Krome Avenue  
Homestead, Florida  
Telephone Circle 7-0848

Bulletin No. 57/58-3

June 13, 1957

To: All Growers and Handlers of Avocados Produced in South Florida

Subject: Maturity Schedule for Summer Varieties

Your Avocado Administrative Committee met on Tuesday, June 11, 1957, and recommended the following shipping schedule for the major summer varieties:

Variety	Date	Min.	Min.	Date	Min.	Min.	Date	Min.	Min.	Date
	A	Wt.	Diam.	B	Wt.	Diam.	C	Wt.	Diam.	D
Fuchs	6-17	12	3 1/16	7-1	11	2 15/16	7-15	10	2 13/16	8-5
Pollock	7-1	18	3 11/16	7-22	16	3 8/16	8-5	14	3 5/16	8-26
Simmonds	7-1	16	3 9/16	7-22	14	3 7/16	8-5	12	3 4/16	8-26
Hardee	7-1	16	3 5/16	7-15	14	3 2/16	7-29	12	2 15/16	8-26
Nadir	7-8	14	3 5/16	7-22	12	3 2/16	8-5	10	2 14/16	9-2

Column "A" No fruit may be shipped before this date.

Column "D" No restrictions on size or weight after this date.

All weights in ounces, diameters in inches. Where a minimum weight and minimum diameter are given, fruit which meets either standard may be shipped.

Notice of the Secretary's approval has been received and is on file in this office.

The following regulations were already in effect for seedlings and all varieties not listed on last season's shipping schedule (AAC-267).

None to be shipped before June 3

June 3 through June 16 - 16 oz. minimum weight

June 17 through July 14 - 14 oz. minimum weight

July 15 through September 8 - 12 oz. minimum weight

On and after September 9 - no size restrictions.

(Provided that avocados of the seedling or unlisted variety category which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped, without regard to weight, if the exterior of the seedcoat is of a brown color which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.)

The shipping dates and weights for all other varieties listed on last season's schedule remain unchanged, pending further recommendations as the season progresses. Dates will be reviewed for Waldin and Trapp avocados at the July meeting.

An announcement was made at Tuesday's meeting naming the following subcommittees for the study of problems in specific fields:

**BUDGET AND FINANCE**

R. R. Kinard, Chairman  
D. S. Ames  
T. P. Clinard

**CONTAINER RESEARCH**

F. M. Kent, Chairman  
J. A. Cox  
C. J. Parman

**MATURITY**

W. H. Krome, Chairman  
D. S. Ames  
T. P. Clinard

**GRADES**

H. E. Kendall, Chairman  
J. R. Brooks  
G. H. Cooper  
I. E. Futch  
C. M. Russell

**RULES, REPORT FORMS AND  
HANDLER REGISTRATION**

G. F. Ward, Chairman  
E. A. Frasier  
T. D. Lewis  
H. Lucerne  
W. Peterson

**VARIETY IDENTIFICATION PANEL**

J. D. Conner  
L. Hilliard  
E. J. Norman  
H. Robertson  
G. D. Ruehle

The next regular meeting of the Avocado Administrative Committee has been scheduled for 9:30 A. M., July 9, 1957, at the office of the Agricultural Agent of Dade County at Homestead, Florida. All meetings are open to the public and all interested persons are urged to attend and to participate in the discussions.

**AVOCADO ADMINISTRATIVE COMMITTEE**  
1102 North Krome Avenue  
Homestead, Florida  
Telephone CI 7-0848.

Bulletin 57/58-5

July 11, 1957

To: All Growers and Handlers of Avocados Produced in South Florida

Subject: Weights, Dates and Sizes Established for Five Additional Varieties

Your Avocado Administrative Committee met on Tuesday, July 9, 1957, and approved shipping dates, weights and sizes for the Trapp, Waldin, Petersen, Pinelli and Tonnage varieties. Regulations based upon the Committee's recommendations are expected to become effective before July 22nd, at which time the general stop order applicable to the shipment of the first of these varieties expires. Maturity regulations recommended or now in effect are as follows:

Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Fuchs	6-17	12	3 1/16	7-1	11	2 15/16	7-15	10	2 13/16	8-5
Pollock	7-1	18	3 11/16	7-22	16	3 8/16	8-5	14	3 5/16	8-26
Simmonds	7-1	16	3 9/16	7-22	14	3 7/16	8-5	12	3 4/16	8-26
Hardee	7-1	16	3 5/16	7-15	14	3 2/16	7-29	12	2 15/16	8-26
Nadir	7-8	14	3 5/16	7-22	12	3 2/16	8-5	10	2 14/16	9-2
Trapp	7-29	14	3 9/16	8-12	12	3 7/16	8-26	10	3 3/16	9-16
Waldin	8-5	16	3 9/16	8-19	14	3 6/16	9-2	11	3 2/16	9-30
Petersen	8-5	12	3 6/16	8-19	11	3 4/16	9-2	10	3 2/16	9-23
Pinelli	8-19	18		8-26	16		9-2	12		9-23
Tonnage	8-26	14	3 5/16	9-2	12	3 2/16	9-9	10	2 14/16	9-23

Column "A" No fruit may be shipped before this date.

Column "D" No restrictions on size or weight after this date.

All weights in ounces, diameters in inches. Where a minimum weight and minimum diameter are given, fruit which meets either standard may be shipped.

The following regulations were already in effect for seedlings and all varieties not listed on last season's shipping schedule (AAC-267).

None to be shipped before June 3

June 3 through June 16 - 16 oz. minimum weight

June 17 through July 14 - 14 oz. minimum weight

July 15 through September 8 - 12 oz. minimum weight

On and after September 9 - no size restrictions

(Provided that avocados of the seedling or unlisted variety category which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped, without regard to weight, if the exterior of the seedcoat is of a brown which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.)

The shipping dates and weights for all other varieties listed on last season's schedule remain unchanged, pending further recommendations as the season progresses.

Your Avocado Administrative Committee also recommended to the Secretary of Agriculture that container regulations be amended to facilitate the shipment of gift packages for the Christmas trade. It has been recommended that, effective December 1st through December 31st of each year, the handling of avocados in any container containing less than 15 pounds net weight of avocados be permitted; Provided, That each such container is individually addressed to and designated for a separate and distinct individual consignee and that the avocados therein meet with all other requirements of the Secretary's Orders applicable to the handling of avocados grown in South Florida.

It was announced at Tuesday's meeting that U. S. Grades for Florida avocados are being processed for application in the near future. The proposed U. S. Grades closely parallel existing Avocado Administrative Committee grades now in effect.

The next regular meeting of the Avocado Administrative Committee has been scheduled for 9:30 A. M., August 13, 1957, at the office of the Agricultural Agent of Dade County at Homestead, Florida. All meetings are open to the public and all interested persons are urged to attend and to participate in the discussions.

David M. Biggar, Manager  
Avocado Administrative Committee



**AVOCADO ADMINISTRATIVE COMMITTEE**  
1102 North Krone Avenue  
Homestead, Florida  
Telephone CI 7-0848

Bulletin No. 57/58-6

August 14, 1957

To: All Growers and Handlers of Avocados Produced in South Florida

Subject: Shipping Weights, Dates and Sizes Proposed for Fall Varieties

Your Avocado Administrative Committee met on Tuesday, August 13, 1957, and gave consideration to proposed shipping schedules for several additional varieties of avocados. However, only one additional variety, the Fairchild, was placed on the recommended picking schedule. Maturity regulations recommended or now in effect are as follows:

Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Fuchs	XXXX	XX	XXXXXXXX	XXXX	XX	XXXXXXXX	XXXX	XX	XXXXXXXX	8-5
Pollock	XXXX	XX	XXXXXXXX	XXXX	XX	XXXXXXXX	8-5	14	3 5/16	8-26
Simmonds	XXXX	XX	XXXXXXXX	XXXX	XX	XXXXXXXX	8-5	12	3 4/16	8-26
Hardee	XXXX	XX	XXXXXXXX	XXXX	XX	XXXXXXXX	7-29	12	2 15/16	8-26
Nadir	XXXX	XX	XXXXXXXX	XXXX	XX	XXXXXXXX	8-5	10	2 14/16	9-2
Trapp	XXXX	XX	XXXXXXXX	8-12	12	3 7/16	8-26	10	3 3/16	9-16
Waldin	8-5	16	3 9/16	8-19	14	3 6/16	9-2	11	3 2/16	9-30
Petersen	8-5	12	3 6/16	8-19	11	3 4/16	9-2	10	3 2/16	9-23
Pinelli	8-19	18		8-26	16		9-2	12		9-23
Tonnage	8-26	14	3 5/16	9-2	12	3 2/16	9-9	10	2 14/16	9-23
Fairchild	8-26	16	3 10/16	9-9	14	3 7/16	9-23	11	3 2/16	10-7

Column "A" No fruit may be shipped before this date.

Column "D" No restrictions on size or weight after this date.

All weights in ounces, diameters in inches. Where a minimum weight and minimum diameter are given, fruit which meets either standard may be shipped.

The following regulations were already in effect for West Indian seedlings and all varieties not listed on last season's shipping schedule (AAC-267).

July 15 through September 8 - 12 oz. minimum weight

On and after September 9 - no size restrictions

(Provided that avocados of the seedling or unlisted variety category which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped, without regard to weight, if the exterior of the seedcoat is of a brown color which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.)

The shipping dates and weights for Guatemalan and hybrid seedlings and all other varieties listed on last season's schedule remain unchanged, pending further recommendations as the season progresses.

Tentative approval was given to the following shipping schedule, with final action deferred on all varieties except Booth 8 until the September 10th meeting. A special telephone meeting will be conducted on September 3rd to determine the Committee's recommendations relative to advancing the dates for the Booth 8 variety.

THIS IS A PRELIMINARY SCHEDULE AND AS YET HAS NO OFFICIAL STATUS.

Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Nirody	9-16	18	3 15/16	9-30	15	3 11/16	10-14	12	3 6/16	11-4
(Booth 8)	9-23	16	3 7/16	9-30	14	3 5/16	10-14	12	3 2/16	--
(Booth 8)	--	--	--	--	--	--	11-4	10	2 15/16	11-25
Simpson	9-30	16		10-14	14		10-28	10		11-18
Rue	10-7	30	4 3/16	10-14	24	3 15/16	10-28	18	3 9/16	11-11
B.Prince	10-7	16		10-21	14		11-4	10		11-25
(Lula)	10-7	18	3 10/16	10-21	16	3 7/16	11-4	14	3 4/16	--
(Lula)	--	--	--	--	--	--	12-3	11	2 15/16	12-9
Booth 7	10-14	16	3 10/16	10-28	14	3 8/16	11-11	11	3 2/16	12-2
Sherman	10-14	16		10-28	14		11-11	10		12-2
Vaca	10-14	16	3 9/16	10-28	14	3 7/16	11-11	10	3 0/16	12-2
Marcus	10-14	32								11-25

Since this is only a preliminary proposed schedule, you are advised to check the final picking schedule, as will be shown on a later bulletin, before picking any of these varieties for market.

The next regular meeting of the Avocado Administrative Committee has been scheduled for 9:30 A. M., September 10, 1957, at the office of the Agricultural Agent of Dade County at Homestead, Florida. All meetings are open to the public, and all interested persons are urged to attend.

David M. Biggar, Manager  
Avocado Administrative Committee

**AVOCADO ADMINISTRATIVE COMMITTEE**  
1102 North Krome Avenue  
Homestead, Florida  
Telephone CI 7-0848

Bulletin No. 57/58-7

September 11, 1957

To: All Growers and Handlers of Avocados Produced in South Florida

Subject: Shipping Schedule for Early Fall Varieties and Proposed Schedule for Late Fall and Winter Varieties

Your Avocado Administrative Committee met on September 3rd and September 10th and added ten named varieties and the Guatemalan and hybrid type seedlings to the list of recommended shipping dates. The entire list of recommended maturity regulations has been reproduced in a single schedule (form AAC-407), a copy of which is enclosed with this bulletin. This schedule of shipping dates will be revised as additional variety regulations are recommended and you will be supplied with an up-to-date copy as each revision is issued.

The Maturity Subcommittee has submitted the following proposed schedule of maturity regulations for the remainder of the varieties which are to be regulated under individual maturity standards. Final action on these proposed recommendations has been deferred until the October 8th meeting to allow late developments to be taken into consideration and to permit interested persons to evaluate the proposed schedule.

**THIS IS A PRELIMINARY SCHEDULE AND HAS NO OFFICIAL STATUS**

Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Hickson	10-21	14	3 4/16	11-4	12	3 1/16	11-18	10	2 15/16	12-9
Collinson	10-21	16	3 11/16	11-4	14	3 8/16	11-18	10	3 1/16	12-9
Avon	10-21	14	3 8/16	11-4	12	3 5/16	11-18	9	2 15/16	12-9
Booth 5	10-21	16	3 11/16	11-4	14	3 9/16	11-18	10	3 3/16	12-9
Blair	10-21	16		11-4			11-18			12-9
Nelson	10-21	14	3 8/16	11-4	12	3 5/16	11-18	10	3 1/16	12-9
Winslowson	10-28	18	3 14/16	11-11	16	3 12/16	11-25	10	3 2/16	12-24
Monroe	10-28	24		11-25	20		12-16	14		1-6
Hall	11-4	20	3 9/16	11-18	16	3 5/16	12-2	14	3 3/16	12-24
Herman	11-4	16	3 9/16	11-18	14	3 7/16	12-2	10	3 1/16	12-24
Booth 10	11-4	16		11-18	14		12-2	10		12-24
Booth 11	11-4	16		11-18	14		12-2	10		12-24
Ajax										
(Booth 7B)	11-11	18	3 12/16	11-25	15	3 9/16	12-9	11	3 3/16	12-31
Booth 3	11-11	16	3 9/16	11-25	14	3 7/16	12-9	10	3 1/16	12-31
Booth 1	11-18	16	3 11/16	12-2	14	3 8/16	12-16	10	3 1/16	1-6
Taylor	11-18	14	3 4/16	12-2	12	3 2/16	12-16	9	2 13/16	1-6
Dunedin	11-18	16	3 10/16	12-2	14	3 8/16	12-16	10	3 1/16	1-6
Choquette	11-18	22		12-2	18		12-16	14		1-6
Linda	12-9	18		12-23	15		1-6	12		1-20
Byars #1	12-9	16		12-23	14		1-6	10		1-27
Nabal	12-9	14	3 8/16	12-23	12	3 5/16	1-6	9	3 0/16	1-27
Wagner	12-16	12	3 5/16	12-30	10	3 2/16	1-13	8	2 14/16	2-3
Schmidt	1-27	16		2-10	14					2-24
Itzamma	2-24									2-24

Since this is only a preliminary proposed schedule, you are advised to check the final shipping dates, weights and sizes as they appear on the recommended and approved schedule before picking any of these varieties for market.

It has been recommended to the Secretary of Agriculture that seedling regulations be amended to give authority to the Inspection Service to classify avocados claimed to be seedlings, but closely resembling a named and regulated variety, as that "type" and to apply the same maturity specifications as are applicable to the named variety.

United States Standards for Florida Avocados, describing the U. S. No. 1, U. S. No. 2, U. S. No. 3 and U. S. Combination Grades, became effective on September 3, 1957. The U. S. Grades closely parallel the Florida Avocado Committee Grades but have not yet been adopted as the official standards under the Avocado Marketing Agreement and Order. A limited number of copies of these U. S. Grade Standards are available for distribution from the Committee office.

The next regular meeting of the Avocado Administrative Committee has been scheduled for 9:30 A. M., October 8, 1957, at the office of the Agricultural Agent of Dade County at Homestead, Florida. All meetings are open to the public, and all interested persons are urged to attend.

David H. Blum, Manager

**AVOCADO SHIPPING DATES**  
**1957-58 Season**

Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Fuchs	6-17	12	3 1/16	7-1	11	2 15/16	7-15	10	2 13/16	8-5
Pollock	7-1	18	3 11/16	7-22	16	3 8/16	8-5	14	3 5/16	8-26
Simmonds	7-1	16	3 9/16	7-22	14	3 7/16	8-5	12	3 4/16	8-26
Hardee	7-1	16	3 5/16	7-15	14	3 2/16	7-29	12	2 15/16	8-26
Nadir	7-8	14	3 5/16	7-22	12	3 2/16	8-5	10	2 14/16	9-2
Trapp	7-29	14	3 9/16	8-12	12	3 7/16	8-26	10	3 3/16	9-16
Waldin	8-5	16	3 9/16	8-19	14	3 6/16	9-2	11	3 2/16	9-30
Petersen	8-5	12	3 6/16	8-19	11	3 4/16	9-2	10	3 2/16	9-23
Pinelli	8-19	18		8-26	16		9-2	12		9-23
Tonnage	8-26	14	3 5/16	9-2	12	3 2/16	9-9	10	2 14/16	9-23
Fairchild	8-26	16	3 10/16	9-9	14	3 7/16	9-23	11	3 2/16	10-7
(Booth 8	9-16	15	3 6/16	9-30	13	3 4/16	10-14	11	3 1/16	--
(Booth 8	--	--	--	--	--	--	10-28	10	2 15/16	11-18
Nirody	9-16	18	3 15/16	9-30	15	3 11/16	10-14	12	3 6/16	11-4
Simpson	9-30	16		10-14	14		10-28	10		11-18
Rue	10-7	30	4 3/16	10-14	24	3 15/16	10-28	18	3 9/16	11-11
B. Prince	10-7	16		10-21	14		11-4	10		11-25
(Lula	10-7	18	3 10/16	10-21	16	3 7/16	11-4	14	3 4/16	--
(Lula	--	--	--	--	--	--	11-18	11	2 15/16	12-9
Booth 7	10-14	16	3 10/16	10-28	14	3 8/16	11-11	11	3 2/16	12-2
Sherman	10-14	16		10-28	14		11-11	10		12-2
Vaca	10-14	16	3 9/16	10-28	14	3 7/16	11-11	10	3 0/16	12-2
Marcus	10-14	32								11-25

Column "A" No fruit may be shipped before this date.

Column "D" No restrictions on size or weight after this date.

All weights in ounces, diameters in inches. Where a minimum weight and minimum diameter are given, fruit which meets either standard may be shipped.

The shipping dates and weights for all other varieties listed on last season's schedule remain unchanged, pending further recommendations as the season progresses.

Schedule for shipment of seedlings, un-named varieties and varieties not listed elsewhere in the regulations (except as noted above).

West Indian Type: None to be shipped before June 3  
June 3 to June 17, none smaller than 16 oz.  
June 17 to July 15, none smaller than 14 oz.  
July 15 to Sept. 9, none smaller than 12 oz.  
After Sept. 9, no size restrictions

Guatemalan Type None to be shipped before Sept. 9  
and Guatemalan x Sept. 9 to Oct. 7, none smaller than 14 oz.  
W. Indian Hybrids: Oct. 7 to Dec. 23, none smaller than 12 oz.  
After Dec. 23, no size restrictions

Exceptions applicable to seedlings and unlisted varieties: Avocados of the seedling or unlisted variety category which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped without regard to weight, if the exterior of the seedcoat is of a brown color which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.



**AVOCADO ADMINISTRATIVE COMMITTEE**

1102 North Krome Avenue

Homestead, Florida

Telephone CI 7-0848

[Vol. 339]

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Bulletin 57/58-8

October 9, 1957

To: All Growers and Handlers of Avocados Produced in South Florida

Subject: Shipping Schedule for Late Fall and Winter Varieties - Minimum Weight Requirement for Packed Avocado Flats

Your Avocado Administrative Committee met on Tuesday, October 8th, and added the remaining 24 previously recognized varieties of Florida avocados to the list of recommended shipping dates, weights and sizes. The entire schedule of picking dates for the 1957/58 season has been consolidated in tabular form for your convenience and a copy is enclosed with this bulletin. This picking schedule (form AAC-417, printed on pink paper) supersedes all previous schedules issued by the Committee.

The Avocado Administrative Committee took action at its latest meeting to petition the Federal Inspection Service to modify its inspection requirements by eliminating the controversial lot identification stamp. An attempt will be made to work out with the Inspection Service some alternative means of identification of inspected packages which will satisfy the need for safeguards without the added cost of stamping, the unnecessary restriction of packers' operations or the stigma implied by the present stamping procedure.

Considerable concern was shown at Tuesday's meeting over the wide variation in net weight of avocados packed in standard containers under existing standard pack specifications. As a result of this failure to achieve standardization, the Inspection Service has been requested to conduct a study of packs and packing procedures in order that an effective standard pack specification might be recommended. In order to effectuate some immediate corrective action, a minimum of 13 1/2 pounds net weight of avocados per flat has been recommended to the Secretary of Agriculture as an amendment to existing container regulations. Regulations containing this minimum weight limitation are expected to become effective on October 14, 1957.

The recap of effective rules and regulations issued pursuant to the Order regulating the handling of avocados grown in South Florida has been amended as of October 9, 1957, to reflect the amended container regulations and to make reference to the latest picking schedule. A copy of the recap is enclosed with this bulletin.

The Committee will consider proposed amendments to Procedural Rules pertaining to the registration of handlers at its next regular meeting. The next meeting has been scheduled for 9:30 A. M., November 12, 1957, at the office of the Agricultural Agent of Dade County at Homestead, Florida.

All meetings of the Avocado Administrative Committee are open to the public and all interested persons are urged to attend and to participate in the discussions.

David M. Biggar, Manager  
Avocado Administrative Committee

AAC-418

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**AVOCADO ADMINISTRATIVE COMMITTEE**  
1102 North Krome Avenue  
Homestead, Florida  
Telephone CI 7-0848

**Bulletin 57/58-8**

**October 9, 1957**

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David M. Biggar, Manager  
Avocado Administrative Committee

AAC-418

**AVOCADO ADMINISTRATIVE COMMITTEE**

1102 North Krome Avenue

Homestead, Florida

Telephone CI 7-0848

**RECAP OF EFFECTIVE RULES AND REGULATIONS ISSUED  
PURSUANT TO THE ORDER REGULATING THE HANDLING  
OF AVOCADOS GROWN IN SOUTH FLORIDA**

- I. Maturity Regulations**--separate schedules of maturity dates, weights and sizes have been prepared and distributed. Form AAC-361 (Bulletin 57/58-2) shows the seedling regulations. Form AAC-372 (Bulletin 57/58-3) describes maturity restrictions applicable to the summer varieties. As additional varieties are included, these schedules will be combined in a more convenient tabular form.
- II. Grade Regulations**--avocados must meet the requirements of the Avocado Administrative Committee Grades Standards for the Number 2 Grade, as specified in the amended Avocado Administrative Committee Rules and Regulations. In addition, containers must be at least fairly tightly packed and, otherwise conform to the standard pack requirements specified in the Grade Standards.
- III. Container regulations**--avocados may be packed in any of the following containers:
- A. Fiberboard or wooden containers with inside dimensions of 11" x 16 3/4" x 10": Provided, That individual avocados in such containers shall weigh at least 20 ounces or measure 3 7/8 inches in diameter. A tolerance of 10%, by count, for any lot (and not more than 20% for any individual container) shall be allowed for avocados which weigh 18 ounces to 20 ounces and fail to measure 3 7/8 inches in diameter (subject to the size restrictions of the standard pack specifications).
  - B. Fiberboard containers with inside dimensions of 13 1/2" x 16 1/2" x 3 1/4."
  - C. Fiberboard or wooden containers with inside dimensions of 13 1/2" x 16 1/2" x 3 3/4."
  - D. Fiberboard or wooden containers with inside dimensions of 13 1/2" x 16 1/2" x 4 1/2."
- IV. Rules**
- A. Handlers desiring to handle avocados under this Order must:
    - 1. Be licensed by the State of Florida as a dealer in agricultural products, and
    - 2. Register with the Avocado Administrative Committee as a handler of avocados.
  - B. Shipments of not to exceed one bushel per day per customer are exempt from regulations, Provided, That such shipments shall not exceed 10 bushels per week per handler.
  - C. Growers residing outside of the production area may participate in the election of Committeemen by assigning proxy rights, Provided, That they file, on or before the 20th of January immediately preceding the election, a written statement of intent to be represented by a particular agent at the nomination meeting.
  - D. Handlers must report weekly:
    - 1. The disposition of all non-certified avocados handled through their facilities.
    - 2. The source of all non-certified avocados received from outside of the district in which registered, and
    - 3. The quantities of each variety of avocados received at their packing facilities.



**MATERIAL UN  
SUITABLE FOR  
MICROCARDS  
PAGES 389 TO 437**



Weight	Date	Rcl.	% oil		Weight	Date	Rcl.	% oil	
Waldin (Kendall)	3625 1 2729 2	7-1 1.6243 1.6265	4.9 3.6	Booths (Kendall)	2973 1 2973 2	9-8 43 37	1.6251 1.6270	4.4 3.3	9-8 Lula Kendall
Lula (Kendall)	3351 1 2736 2	1.6260 1.6267	3.9 3.5	Booths (Brooks)	4129 1 3411 2	4.9 5.0	1.6243 1.6246	4.9 4.7	Lula Brooks
Booths Blk 5 R2T1	3405 1 2972 2	1.6238 1.6257	5.3 4.1	7-2 Lula (Flag)	4450 1		1.6260	3.9	Waldin Kendall
Lula Blk 5 R16T1	3624 1 2552 2	1.6262 1.6276	3.8 3.0	Booths (Flag)	4723 1		1.6243	4.9	Waldin Brooks
Lula Blk 9 R5T3	4964 1 3451 2	1.6263 1.6275	3.7 3.0	Waldin (Kendall)	<del>3048</del> 2273 <del>22</del> 3078		1.6258 1.6247	4.0 4.7	Booths Flag
Booths Blk 5 R2T1	5063 1 4309 2	1.6262 1.6261	3.8 3.8	Waldin (Brooks)	3017 1 1975 2		1.6250 1.6270	4.5 3.3	9-9 Booths Kendall
Lula Blk 9 R5T3	3744 1 3081 2	1.6241 1.6242	5.1 5.0	(Pawatts) Lula	3792 1 3067 2	5 3	1.6229 1.6244	5.8 4.9	Lula Flag
Booths Blk 5 R11	3280 1 2255 2	1.6252 1.6270	4.4 3.3	(Pawatts) Booths	3739 1 2311 2		1.6249 1.6259	4.6 4.0	Booths Brooks
Lula Blk 9 R5T1	4146 1 3711 2	5.0 4.5	1.6241 1.6256	5.1 4.1	Lula (Brooks)	4156 1 →	1.6255	4.2	Lula Hasty &?
Lula Blk 5 R11	440 1 414 2 490 3	94 1.6210 1.6216 1.6221	6.9 6.6 6.3	9-4 Lula Blk 9 R5T6	501 1 495 2 438 3	7-9 2 3	1.6224 1.6248 1.6245	6.1 4.6 4.8	9-9 Lula R2T3 Blk
Booths Blk 5 R11	573 4 480 5 537 6	ave. int. 485 1.6195 1.6235	7.9 5.4	ave. 7.0 = 6.4 6.6	481 4 455 5 456 6	5.2 5 6	1.6209 1.6234 1.6240	7.0 6.5 5.1	
Lula Kendall	572 7 226 8 450 9 473 10	1.6222 1.6214 1.6218 1.6224	6.2 6.7 6.4 6.1		516 7 518 8 502 9 535 10		1.6241 1.6210 1.6231 1.6228	4.7 6.9 5.7 5.8	
			6.37		4.97			5.62	



<i>P. M.</i>	<i>Mature</i>	<i>Nov 28</i>	<i>Sight</i>	<i>Date</i>	<i>R 9</i>	<i>% Sol</i>	<i>Nov 28</i>	<i>Sight</i>	<i>Date</i>	<i>R 9</i>	<i>% Sol</i>	<i>December 2</i>
82 617	Taylor's	552	1	10218	60	81 318	Lula #5	5615	10 61	16198	87	Lula, Brooks
81 118		552	2	10207	71	81 137	R 10 T2	4719	2	6	82	
79 520		641	3	16196	78	79 461						Lula Randall
83 665		585	4	10231	57	80 139		5791	2	72	83	
81 256		445	5	10235	50	80 339		4533	2	6.9	16206	72
81 500		495	6	16226	60	79 341						Borch, Rhiney
79 960		515	7	10209	71	79 780	Nov 30	5458	21	16154	17	
82 000		421	8	10220	63	80 677						December 2
79 560		435	9	16224	61	78 364						Jail, Rhiney
82 480		404	0	16220	63	82 575		5705	21	16199	76	
												Lula, Brooks
79 851	Nov 28	4934	11-30	16220	6.3		Lula #5	5615	8	16193	80	
78 961	Borch P. W.						R 10 T16					Borch 7, Kendall
79 241		5071	11-30	16182	88		Lula Light	6029	1	16188	84	
80 179								4857	2	16181	88	
72 884		5105	11-30	16180	89		Lula, Aladany	3845		16170	96	Taylor, Brooks
81 318		5805	11-30	16161	10.2		Lula, Brook, etc 7	3853		16181	88	Taylor, Rhiney
81 318												Borch 3, Rhiney
82 734		4826	11-30	16192	9.4		Lula Rhiney	5678		16156	10.5	
82 135												Borch 3, Hay
79 900		684	11-30	16189	8.3	75 324	Borch 7, B. 9	5384		16188	8.4	Borch 8, Brooks
		676	2	16151	10.9	74 825	R 10 T16					
75-449	Nov 28	547	2	16167	9.8	76 370		4462	1	16189	83	
75 249	Lula, #9, R3T3	584	4	16161	10.2	76 646		3295	2	16174	9.3	
76 992		616	5	16165	9.9	75 772						December 4
78 664		663	6	16158	10.4	77 345						Hickory, Rhiney
76 123		643	7	16171	9.5	78 364		4559		16163	10.0	
78 023		617	8	16164	10.0	77 667						Borch 7, Rhiney
75 359		539	9	16175	9.2	75 748		4718		16186	8.5	
77 622		484	10	16186	8.5	75 573						Hickory, Kendall
77 400								4544		16170	9.6	
74 900												
		4818	12-19	216169	9.6							
		3501	2	9.616172	9.4							

Weight	Date	R.S.	% Oct	% Moisture	Dec. 4
609	1 12.7	1.6223	4.6		Lula, Bl. 8
666	2	1.6206	2.2		R 17.24
463	3	1.6250	4.5	76.294	
687	4	1.6222	6.1		
646	5	1.6188	8.4		
640	6	1.6227	5.9	71.152	Dec. 8
707	7	1.6195	9.9		
639	8	1.6235	5.4	71.742	
626	9	1.6199	7.6		
571	10	1.6205	7.2		

Weight	Date	R.S.	% Oct	% Moisture	December 10
408	1 12-10	1.6182	8.8	76.667	Bond 7 Bl. 5
433	2	1.6218	6.4	79.860	R 15 T1
471	3	1.6204	7.3	77.310	
502	4	1.6211	6.9	79.810	
514	5	1.6202	7.4	78.784	
539	6	1.6184	8.6	78.386	
552	7	1.6201	7.5	78.428	
492	8	1.6200	7.6	77.812	
440	9	1.6208	7.1	80.339	
472	10	1.6219	6.4	79.950	Dec. 11

578	1 12-11	1.6195	7.9	76.257	December 11
669	2	1.6183	11.0	76.040	Bond 7 Bl. 9
525	3	1.6147	11.2	75.398	Ra T1
737	4	1.6155	10.4	76.047	
640	5	1.6164	11.4	74.775	
648	6	7.6195	7.9	76.200	
638	7 12-11	1.6135	12.0	73.900	Dec. 14
630	8	1.6166	9.8	75.473	
535	9	1.6152	10.8	74.576	
567	10	1.6177	9.1	77.600	

611	1 12-10	1.6218	6.5	82.135	Dec. 14
511	2	1.6182	8.8	75.524	Lula, Bl. 9
463	3	1.6144	10.0	75.700	R 15
592	4	1.6163	10.0	75.948	Dec. 15
586	5	1.6162	10.8	75.948	
632	6	1.6141	11.6	73.080	
622	7	1.6173	9.4	72.624	
532	8	1.6196	7.8	77.367	
489	9	1.6173	9.4	70.529	
390	10	1.6209	7.0	78.680	

5423	1 12-15	9.7 1.6158	10.4		Lula, Brooke
4320	2	9.2 1.6173	9.4		Dec. 16 3/4



13	7.8	Lula, Kendall	2700	(6)	12-7	Helonax - 2.2.10302 1.6232 72 1.6184 a 6.8	Booth 3 Kendall #2
10	6.7	Lula, Kendall	2989	(6)	12-7	1.6178 a 7.2	Lula, Kendall #2
1	4.2	Lula, Kendall	2900	(6)	12-7	1.6175 a 7.4	Booth 1 Kendall #4
10	8.6	Lula, Kendall	3215	(6)	12-7	1.6153 a 8.8	Lula, Kendall #8
4	7.1	F.E.C. Sta Lula, Co December 6	3200	(6)	12-7	1.6170 a 7.7	Lula, Kendall #8
7	10.2	Booth 1, F.E.C. Sta	3535	(6)	12-7	1.6169 a 7.8	Lula, Kendall #10
8	8.8	Lula, F.E.C. Sta	3977	(6)	12-10	Helonax: 1.6339 1.6175 10.8	December 10 Lula, La
12	8.5	Booth 1, F.E.C. Sta	3020	(6)	12-10	1.6182 9.6	Booth 1, Booth (ca)
05	8.3	Lula, Flag	3041	(6)	12-10	1.6158 11.3	Booth 1, Buchanan
58	11.5	Vaca, Krome	3633	(1)	12-10	1.6188 9.2	Taylor, Ames
12	11.2	Lula, Kendall	3334	(6)	12-10	1.6209 7.8	Taylor, Higgins, Tenn
16	7.6	Lula, Kendall	3721	(6)	12-10	1.6211 7.7	Lula, Higgins House
242	6.0	Booth 6, Kendall	3477	(6)	12-10	1.6214 7.5	Herman, Cotton December 11
98	8.8	Booth 3, Kendall	3904	(6)	12-10	1.6219 7.2	Lula, Herman
84	9.7	Booth 1, Kendall December 7	3133	(8)	12-10	1.6211 7.7	Lula, Cotton
15	7.6	Lula, Kendall	3168	(6)	12-10	1.6208 7.9	Lula, Camp
30	6.7	Lula, Kendall	3447	(6)	12-11	1.6204 8.2	Lula, White (Laid)
94	9.0	Taylor, Kendall	3257	(6)	2-11	1.6207 8.0	Lula, Hartman, W. Lin
212	9.8	Nickerson, Kendall	3428	(6)	2-11	1.6218 7.2	Lula, Hartman, E. Lin



2994	(6)	12-12	1.6339 1.6190	9.1	December 12, 1966 Lula, Flint
3177	(6)	12-12	1.6156	9.3	Brook 1, Flint
2526	(6)	12-11	1.6222	7.0	Brook 7, Brook
2122	(6)	12-12	1.6225	6.8	Hickson, Kalyin
3296	(7)	12-12	1.6161	11.1	Brook 1, Navaro
3868	(1)	12-11	1.6201	8.4	Lula, Loan #1
3303	(7)	12-11	1.6190	9.1	Lula, Loan #2
1079	(3)	12-12	1.6199	8.5	Capla Kase <sup>ST</sup> Lundy December 12
4086	(6)	12-13	1.6182	9.6	Brook 70, Kendall
3486	(6)	12-13	1.6173	10.2	Brook 3, Kendall
3363	(6)	12-14	1.6201	8.4	Collinson, Kendall
3478	(6)	12-14	1.6159	11.2	Brook 3, C. Lee
296.3	(6)	12-14	1.6205	8.1	Herman, Kendall
3182	(6)	12-14	1.6213	7.6	Collinson, PH Kenda
3091	(6)	12-17	1.6183 1.6296	6.8	December 17 Lula, Camp
3091	(6)	12-17	1.6233 1.6343	6.6	December 18 Lula, Camp
1973	(4)	12-20	1.6175	10.4	December 20 Pope, Pope
1973	(4)	12-20	1.6138	13.5%	December 27 Pope, Pope
2282	(6)	12-27	1.6232	6.7	Lula, <del>Hickson</del>
2016	(6)	12-27	1.6214	7.8	Taylor, <del>Hickson</del> 37912

[fol. 389]

## PLAINTIFFS' EXHIBIT 17

**SOUTH FLORIDA GROWERS ASSOCIATION, INC.  
AVOCADO SHIPMENTS BARRED FROM  
SALE IN CALIFORNIA**

November 10, 1954, shipped 449 boxes\* (134/24s, 42/27s, 147/30s, 126/36s) and 359 flats (229/9s, 130/10s) of Lula avocados to Calavo, Inc., Los Angeles, California. Upon arrival at Los Angeles, 118 boxes (42/36s, 76/30s) were rejected upon test of oil content; reshipped to Phoenix, Arizona. Sales in Los Angeles averaged \$4.43 per box, whereas sales in Phoenix were only \$4.17 per box; added transportation and handling costs brought loss on shipment to \$59.85.

November 11, 1954, shipped 650 boxes Booth 7 avocados, 539/30s and 111/36s, on consignment to Calavo, Inc., Los Angeles, California. On arrival at Los Angeles, 428/30s and 111/36s were rejected upon test of oil content. These were reshipped to Calavo, Inc., at Phoenix, Arizona and sold at average of \$3.92 per box as compared with sales in Los Angeles at \$4.50 per box; added transportation and handling costs amounted to \$158.14; total loss \$394.20.

November 12, 1954, shipped 650 boxes (575/30s, 75/36s) of Lula avocados to Calavo, Inc., Los Angeles, California. Upon arrival at Los Angeles, 97 boxes (30 size) were rejected upon test of oil content; reshipped to Phoenix, Arizona. Sales in Los Angeles averaged \$4.43 per box, whereas sales in Phoenix averaged \$3.90 per box; added transportation and handling costs brought loss on shipment to \$75.39.

[fol. 390] November 18, 1954, shipped 650 boxes of Lula avocados to Calavo, Inc., Los Angeles, California. Upon arrival at Los Angeles, 72 boxes were rejected upon test of oil content; reshipped to Phoenix, Arizona; added transportation and storage costs resulted in loss on shipment amounting to \$24.89.

\* Boxes, 40 lbs; flats (or lugs), 15 lbs.



November 16, 1955, shipped 677 boxes (140/30s, 395/36s, 142/41s) of Lula avocados to Lucky Stores at San Leandro, California, on order of Calavo, Inc., San Francisco. These were originally sold at \$5.00 per box delivered. Upon arrival at San Leandro, the 39-size and 41-size boxes, amounting to 282 boxes, were rejected upon test of oil content; reshipped to Calavo, Inc., Portland, Oregon; sold there at lower price, and added transportation and storage costs resulted in loss of \$210.62 on this shipment.

November 29, 1956, shipped 1,550 flats of Lula avocados (65/12s, 158/14s, 721/16s, 656/18s) to Calavo Growers of California, Los Angeles, California, on consignment. Upon arrival at Los Angeles, the 721 flats of 16-size avocados were rejected upon test of oil content; reshipped to Calavo Growers of California at Phoenix, Arizona. The average selling price in Los Angeles was \$3.00 per flat, whereas the fruit sold in Phoenix averaged \$2.08 per flat; added transportation and handling costs resulted in loss of \$821.62 on this shipment.

[fol. 391] November 14, 1957, shipped 1,795 flats of Lula avocados (62/10s, 1051/12s, 492/14s, 190/16s) to Lucky Stores at San Leandro, California, on order of Calavo Growers of California, San Francisco. Upon arrival at San Leandro, the 492/14s were rejected upon test of oil content; reshipped to Calavo Growers of California at Salt Lake City, Utah, where they were sold at \$1.00 per flat. Since these avocados were originally sold at \$1.89 per flat at San Leandro, a loss of \$.89 per flat resulted in addition to added transportation and handling costs of \$202.02, making a total loss on the shipment of \$639.90.

## PLAINTIFFS' EXHIBIT 18

SOUTH FLORIDA GROWERS ASSOCIATION, INC.

Avocados handled in calendar years  
1954, 1955, 1956, 1957

<u>Total Volume in bushels **</u>	<u>Sales in Florida</u>	<u>Sales in California</u>	<u>Sales in Other States</u>
1956 144,048	9272	15,055	119,721
1957 181,628	6762	2,443	172,423
<u>Total</u>	<u>16034</u>	<u>17,498</u>	<u>292,144</u>
1956-1957 325,676			
% of Total 100%	4.93%	5.37%	89.70%

1954 - Total Volume 166,818

1955 - Total Volume 206,308

Distribution of sales not available

\*\* Bushel - 55 lbs.

SOUTH FLORIDA GROWERS ASSOCIATION, INC.

Avocados handled in calendar years 1954,  
1955, 1956, 1957

(In bushels, at 55 pounds per bushel)

<u>Total volume</u>	<u>Sales in Florida</u>	<u>Sales in California</u>	<u>Sales in other states</u>
<u>1954</u> 166,818	--	5,734	161,084
<u>1955</u> 205,308	--	11,673	194,635
<u>1956</u> 144,048	9,272	15,055	119,721
<u>1957</u> 181,628	6,762	2,443	172,423

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FLORIDA LIME AND AVOCADO GROWERS, INC.

AVOCADOS HANDLED IN SEASONS

1955-56; 1956-57; 1957-58\*

<u>Total Volume in Bushels**</u>	<u>Sales in Florida</u>	<u>Sales in California</u>	<u>Sales in Other States</u>
1955-56 : 59,543	418	10,806	46,319
1956-57 : 30,191	210	3,415	26,566
1957-58 : 34,099	156	2,538	31,405
(To Jan. 10, 1958)			
<hr/> TOTAL 123,833	<hr/> 784	<hr/> 16,759	<hr/> 106,290
% of Total - 100%	.0063%	13.53%	85.84%

PLAINTIFFS' EXHIBIT '20

\* Season about August 1 to February 15

\*\* Bushel - 55 lbs.

1954-55 season: total volume handled-

47,954 bushels

Sales in California -

12,641 "

Other distribution figures not available.

[fol. 395]

## PLAINTIFFS' EXHIBIT 21

**FLORIDA LIME AND AVOCADO GROWERS, INC.:  
AVOCADO SHIPMENTS BARRED FROM  
SALE IN CALIFORNIA**

November 10, 1955, shipped 1129 lugs of Lula avocados, 12 per lug (12's), on sale to Safeway Stores, Oakland, California (through buying office at Lakeland, Florida) @ \$1.85 per lug delivered, total \$2,088.65; entire load rejected in California upon test of oil content and reshipped to E. O. Muir, Salt Lake City, Utah; proceeds of sale in Salt Lake City, net after added transportation and handling costs, \$711.60; loss \$1,377.05.

November 12, 1955, shipped 800 lugs of Lula avocados, 12 per lug (12's) on sale to Safeway Stores at Sacramento, California, and 1283 lugs Lula avocados (12's) to Safeway Stores at Oakland, California, (through buying office at Lakeland, Florida) @ \$1.85 per lug delivered, total \$3,853.55; entire load rejected in California upon test of oil content and reshipped to United Brokers, Inc., Portland, Oregon; proceeds of sale in Portland, net after added transportation and handling costs, \$1,683.01; loss \$2,170.54.

November 14, 1955, shipped 2208 lugs of Lula avocados, 12 per lug (12's), on sale to Safeway Stores, Oakland, California, (through buying office at Lakeland, Florida) @ \$1.85 per lug delivered, total \$4,084.80; entire load rejected in California upon test of oil content and reshipped to Pacific Fruit and Produce Company, Medford, Oregon, and Seattle, Washington; proceeds of sale in Medford and Seattle, net after added transportation and handling costs, \$1,788.20; loss \$2,296.60.

[fol. 396] December 8, 1955, shipped 700 lugs of Lula avocados and 200 bruce boxes of Lula avocados (40 pounds net weight), on sale to Mendelson-Zeller Company, Los Angeles, California, @ \$2 per lug, and @ \$4 per bruce, total \$2,200; entire load rejected in California upon test of oil content and reshipped to Crombie & Company, El Paso.

Texas; proceeds of sale in El Paso, net after added transportation and handling costs, \$548.18; loss \$1,651.82.

November 15, 1957, shipped 1874 lugs of Lula avocados to California, 900 lugs on consignment to Williams and Son Produce Company, Los Angeles, and 974 lugs on consignment to Felix Cohen & Son, Oakland; 361 of the lugs unloaded at Los Angeles, rejected upon test of oil content (sizes 16's and 18's); reshipped to Phoenix, Arizona, and added transportation and handling expenses included in price paid by buyer.



LOS ANGELES COUNTY  
AGRICULTURAL COMMISSIONER  
STANDARDIZATION DIVISION

NO 59762

307 WHOLESALE TERMINAL BUILDING  
LOS ANGELES, CALIFORNIA TELEPHONE VA 4577

STANDARDIZATION VIOLATION—HOLD REPORT

NOTICE: (1) The below described lot, including the containers thereof, is a public nuisance. Until reconditioned or otherwise brought into compliance the transportation or sale of such lot is illegal. (2) If the lot is held and a "Hold Tag" has been affixed to the lot, as indicated above, it is unlawful to remove the lot from its present location except under the specific direction of an authorized enforcing officer. Unless such lot held by the enforcing officer is reconditioned or otherwise brought into compliance by not later than \_\_\_\_\_ o'clock (a.m.) (p.m.)

\_\_\_\_\_ 195... or written consent to destroy or otherwise dispose of said lot shall have been given to the enforcing officer by the persons served with notice of noncompliance, the commodity or commodities are subject to the order of any court of competent jurisdiction to destroy such lot or otherwise abate the nuisance.

DATE 4/20 19 52 TIME 7:15 PM INSPECTOR

AMOUNT 300 KIND Avocado

IDENTIFYING MARKS 16 8185 28 Flow Brand Lulu's

FOUND IN POSSESSION OF William J. Jones

AT (ADDRESS) 714 H. H. Court T. R. A.

CAR OR TRUCK NO.                      RETAIL BKT.                      WHOLESALE BKT.                      RANCH PKG.                      HOUSE

CONSIGNOR Florida Lime & Fruit Co.

ADDRESS Princeton Florida 91008

DELIVERED BY                     

ADDRESS                     

UNLAWFUL ACT Possession

SECTION NO. 784

NON-COMPLIANCE OF COMMODITY Immaturity, Excess

of immature Avocados

SECTION NO. 784

LOT not held NEW 14 HOLD OVER 9.8, 9.0, 10.95, 8.8, 12.9

REMARKS 70-1851 28 = 7.4, 9.95, 7.35, 7.75, 9.0

791-1851 28 = 9.1, 7.8, 7.35, 9.4, 9.1

Tests added by laboratory

[fol. 397]

PLAINTIFFS

3440 028

59762

Confidential - Not to be quoted or copied.

General Information on Avocado Research - 1953-54

Paul L. Harding.  
Agricultural Marketing Service  
U. S. Department of Agriculture  
Orlando, Florida

Growers

A Kendall  
B Brooks  
C Rheney  
D F.L.A.G.  
F White

G Futch  
H Hickson  
I Harkness  
J Subtropical Experiment Station

Samples - About 40 fruits - 20 tested for oil - Homestead  
20 tested for flavor - Orlando

Pressure tests - 5/16 inch plunger on hard fruit  
7/16 inch plunger on soft fruit

Softening temperature - Days to soften at 75°F.

Flavor - based on average numerical taste rating of fruit above and below  
weight class for earliest picking date.

Score card - Flavor based on arbitrary numerical taste score.

Tasters - About 10 staff members:

Harding, Sunday, Nelson, Winston, Meckstroth, Cuobedge, Roberts,  
Dudak, Welty, McLendon, Smith, Gardner, Melvin

Method of tasting - Lot divided into below and above weight class; fruit  
cut in half, tasters sampled longitudinal slices.

[fol. 398]

PLAINTIFFS' EXHIBIT 23

# Varieties and Sampling - 1953-54

Variety	Groves tested	Lots tested	Fruit tested	Sampling period
Pollock	1	1	15	8-7-53
Waldin	5	17	267	8-3 to 10-6-53
Trapp	2	2	18	8-19 to 9-26-53
Pinnelli	1	1	7	9-16-53
Tonnage	1	2	26	8-15-53
Booth 8	3	36	698	8-19 to 12-15-53
Lula	4	47	727	8-19-53 to 1-12-54
Booth 7	2	17	256	9-29 to 12-15-53
Wickson	4	15	236	9-29 to 12-12-53
Collinson	1	2	21	10-27-53
Taylor	2	15	251	10-22-53 to 1-12-54
Hall	3	17	200	9-29 to 12-29-53
Herman	2	3	31	10-13 to 11-11-53
Booth 1	2	8	113	10-22 to 12-15-53
Booth 3	2	14	211	8-25 to 12-29-53
Wagner	1	2	30	12-16-53
Choquette	1	1	3	12-8-53
17	37	200	3110	August 7, 1953 to Jan. 14, 1954

## SCORE CARD FOR TESTING TASTE OR FLAVOR OF AVOCADOS

Arbitrary Standard	Taste or flavor of fruit	Numerical Rating Range Corres- ponding to description.	Individual Numerical Rating
Green	Green, grassy, bitter, unpleasant after taste, unpalatable and rubbery to soft texture (Does not meet consumer acceptance)	50 - 59	
Unpalatable	Flat, watery, slightly bitter, slightly unpleasant after taste and rubbery to soft texture (Does not meet consumer acceptance)	60 - 69	
Palatable	Smooth, mellow, watery, satisfactory flavor and firm to soft texture (Meets minimum standard of consumer acceptance)	70 - 79	
Excellent	Smooth, mellow, tasty, rich, nutty with quality of distinct excellence and buttery texture (Excellent)	80 - 100	

Underscore or write in character or characters that determined your rating.



## THE RELATION OF MATURITY TO QUALITY IN FLORIDA AVOCADOS<sup>1</sup>

PAUL L. HARDING

*Principal Plant Physiologist*

*Agricultural Marketing Service*

*U. S. Department of Agriculture*

Orlando

In the past there was no legal standard for picking avocados grown in Florida. Many conscientious growers and shippers picked and allowed to soften a few representative fruits. Marketing was based on the outcome of these tentative observations. The purpose of the present investigation was to find an easily applied test whereby palatability of the softened fruit would be correlated with maturity. The changes that occur in Florida avocados during their maturing, ripening, and softening periods were studied to obtain data on which to base a practical standard for determining the quality of the fruit. The results presented indicate that maturity of a variety can be fairly well designated by correlating minimum fruit weights and picking dates.

During the 1953-54 season some 200 different lots of avocados representing 16 commercial varieties were tested at Orlando for minimum maturity requirements. Special attention was given to (a) picking date and (b) fruit weight in accordance with the proposals made by the leaders in the industry.

### REVIEW OF LITERATURE

In 1925 California avocado growers succeeded in having established a State maturity standard of 8 percent fat or oil content. Hodgson (2) stated that "this action has been productive of very great benefit to the industry

mostly windfalls or stolen fruit from the market."

Wolfe, Toy, and Stahl (5) published results of analyses of fruit of a large number of avocado varieties grown in Florida. They found no correlation between fat content and good quality as far as comparison of varieties is concerned. Their results showed that two of the finest varieties for eating are the Trapp and Pollock, both low in fat. The varieties Collinson and Linda, almost equally esteemed, have twice the fat content of the other two. Wolfe, Toy, and Stahl further stated that some varieties low and some high in this constituent are distinctly mediocre in palatability.

### MATERIAL AND METHODS

Most of the avocado fruit used in this study was grown in Dade County, but a few lots were obtained from other parts of Florida.

The samples consisted of 40 or more fruits picked at intervals of 1 and 2 weeks. About 20 fruits of each sample were shipped to Orlando via Railway Express Agency with a transit period of 2 or 3 days. The portions of the samples retained in Homestead were tested for oil content by the refractive index method used in California (3, 4). Seasonal changes in the oil content of avocados will be discussed by Harkness (1).

The period of testing was August to January, and usually various stages of fruit development from immaturity to post-maturity were covered. Immediately on arrival at the Horticultural Field Station at Orlando, Florida, each fruit was numbered, weighed, and stored at 75 degrees F. for softening. Picking date, weight of fruit, number of days required for softening, loss in weight during softening and



conscientious growers and shippers picked and allowed to soften a few representative fruits. Marketing was based on the outcome of these tentative observations. The purpose of the present investigation was to find an easily applied test whereby palatability of the softened fruit would be correlated with maturity. The changes that occur in Florida avocados during their maturing, ripening, and softening periods were studied to obtain data on which to base a practical standard for determining the quality of the fruit. The results presented indicate that maturity of a variety can be fairly well designated by correlating minimum fruit weights and picking dates.

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#### REVIEW OF LITERATURE

In 1925 California avocado growers succeeded in having established a State maturity standard of 8 percent fat or oil content. Hodgson (2) stated that "this action has been productive of very great benefit to the industry in that it has helped eliminate immature fruit,

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<sup>1</sup>The author commends Mr. Charles H. Steffani, Dade County Agricultural Agent, and acknowledges the importance of his published report on the maturities of avocados and the value of his efforts to the organization of the research program. Acknowledgment is made to Dr. Roy W. Harkness, Assistant Chemist, Sub-Tropical Experiment Station, University of Florida, for his generous cooperation in this project, and to the following growers and shippers for providing fruit used in these investigations: J. R. Brooks, Florida Lime and Avocado Growers, Inc., Ivey E. Futch, Harold E. Kendall, and William E. Rheney. Credit is hereby given the following staff members who assisted in conducting the study: Earl F. Nelson and Milliard B. Sundav.

son and Linda, almost equally esteemed, have twice the fat content of the other two. Wolfe, Toy, and Stahl further stated that some varieties low and some high in this constituent are distinctly mediocre in palatability.

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The period of testing was August to January, and usually various stages of fruit development from immaturity to post-maturity were covered. Immediately on arrival at the Horticultural Field Station at Orlando, Florida, each fruit was numbered, weighed, and stored at 75 degrees F. for softening. Picking date, weight of fruit, number of days required for softening, loss in weight during softening, and flavor or "taste" also were recorded. All lots were rated by about ten members of the staff on the arbitrary standard scale on the score card reproduced herein.

#### RESULTS

The varieties Waldin, Booth 8, Lula, Booth 7, Hickson, Taylor, Hall, Booth 1, and Booth 3 are represented adequately in the experimental data, and Trapp, Pinnelli, Tonnage, Collinson, Herman, Wagner, and Choquette are inadequately represented (table 1).

## HARDING: AVOCADO MATURITY

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## SCORE CARD FOR TESTING TASTE OR FLAVOR OF AVOCADOS

Arbitrary Standard	Taste or flavor of fruit	Numerical rating range corresponding to description	Individual numerical rating
Green	Green, grassy bitter, unpleasant after taste, unpalatable and rubbery to soft texture (Does not meet consumer acceptance)	50 - 59	
Unpalatable	Flat, watery, slightly bitter, slightly unpleasant after taste and rubbery to soft texture (Does not meet consumer acceptance)	60 - 69	
Palatable	Smooth, mellow, watery, satisfactory flavor and firm to soft texture (Meets minimum standard of consumer acceptance)	70 - 79	
Excellent	Smooth, mellow, tasty, rich, nutty with quality of distinct excellence and buttery texture (Excellent)	80 - 100	

Underscore or write in character or characters that determined your rating

The general findings (table 1) showed a close relation between quality of fruit and definite picking dates and weight. In the 1953-54 crop year, the proposed standards

taste, and the texture was rubbery to soft (fig. 1).

Palatability was correlated with maturity of fruit on the tree. Avocados, particularly Lula,

Green	Green, grassy bitter, unpleasant after taste, unpalatable and rubbery to soft texture (Does not meet consumer acceptance)	50 - 59	
Unpalatable	Flat, watery, slightly bitter, slightly unpleasant after taste and rubbery to soft texture (Does not meet consumer acceptance)	60 - 69	
Palatable	Smooth, mellow, watery, satisfactory flavor and firm to soft texture (Meets minimum standard of consumer acceptance)	70 - 79	
Excellent	Smooth, mellow, tasty, rich, nutty with quality of distinct excellence and buttery texture (Excellent)	80 - 100	

Underscore or write in character or characters that determined your rating

The general findings (table 1) showed a close relation between quality of fruit and definite picking dates and weight. In the 1953-54 crop year, the proposed standards would have permitted the shipment of fairly satisfactory fruit. The results indicate no change from the proposed minimum standard for Waldin and Lula. However, weight of fruit should be slightly increased for Booth 7 and slightly decreased for Booth 1 and Booth 3.

Large avocados of any variety were rated higher in flavor than small fruit. In this connection it should, however, be pointed out that quality was not directly associated with large fruit per se. It was frequently demonstrated that large to very large avocados of a late-maturing variety would not ripen satisfactorily when picked too early. The texture was usually soft and rubbery, and the flavor was "green" and "unpalatable." Smaller avocados in a lot often required longer periods to soften at 75 degrees F. than did the larger fruit. The small fruit was frequently unpalatable when soft. The flavor was flat, watery, and slightly bitter. There was a slightly unpleasant after

taste, and the texture was rubbery to soft (fig. 1).

Palatability was correlated with maturity of fruit on the tree. Avocados, particularly Lula, Booth 8, Booth 3, Hickson, and Hall, were mediocre in quality when picked at an early stage of maturity. The fruit was good to very good when harvested at a later date. After fruits attained maturity, quality varied among groves. For example, the fruit from Grove A rated higher than that from Grove D (fig. 2). However, it should be pointed out that the stage of maturity of the fruit when harvested is directly related to its palatability and is the most important factor that influences eating quality. Other factors, such as weather conditions, including rainfall and sunshine, soils and fertilizers, likewise may affect eating quality; but it has not been feasible to determine in what way or to what extent.

The rate of softening of fruit at 75 degrees F. was fairly uniform. The time required for fruit to reach eating quality was 3 to 10 days and averaged 5 days. The loss in weight of fruit during the softening period at 75 degrees F. averaged about 5 percent. Decay was not very important during ripening. Total decay

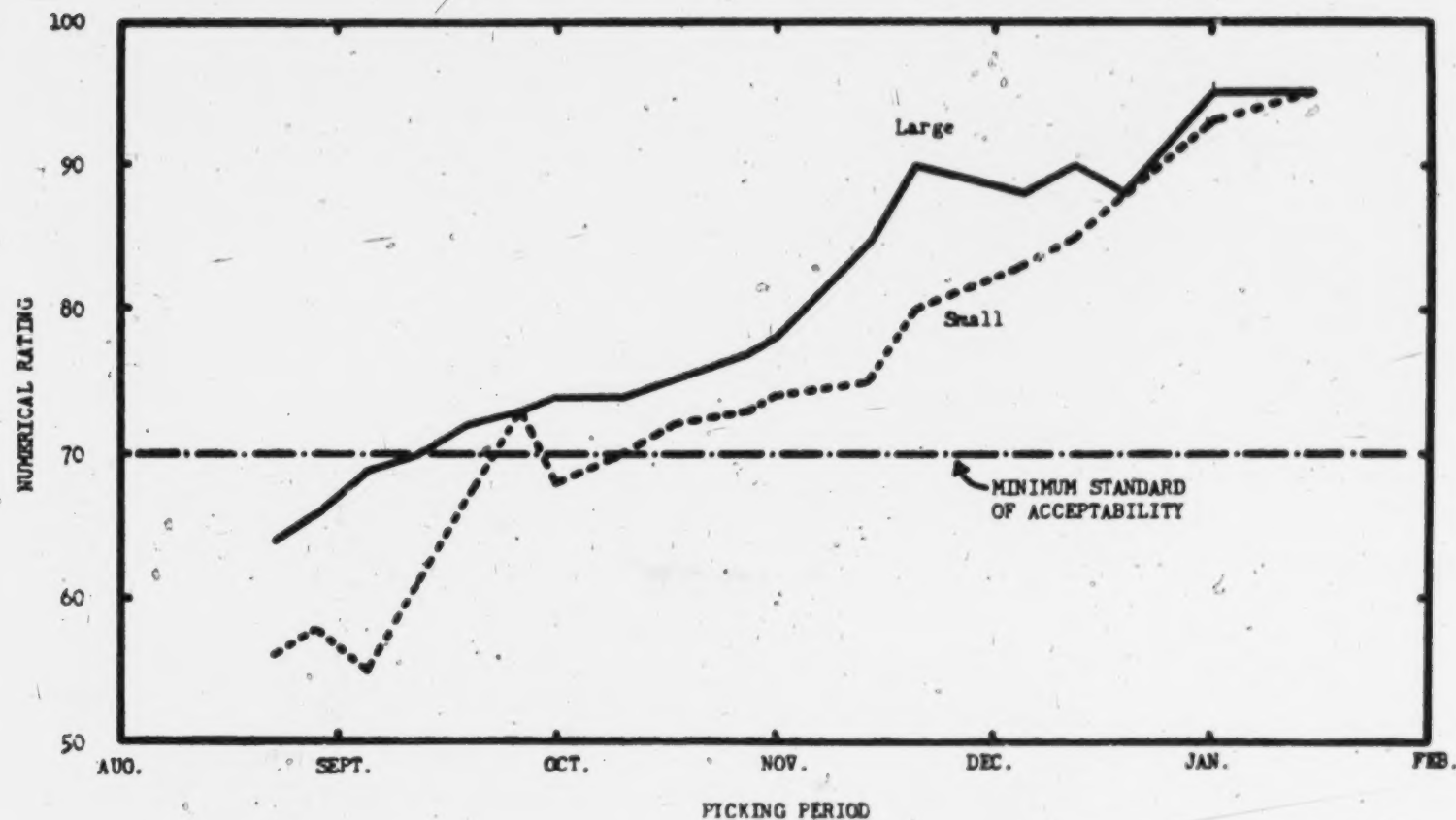


Figure 1.--The palatability of large (average weight 15 ounces) and small (average weight 12 ounces) Lula avocados at different picking periods. Results based on averages of 3 crops of fruit, 1953-54.





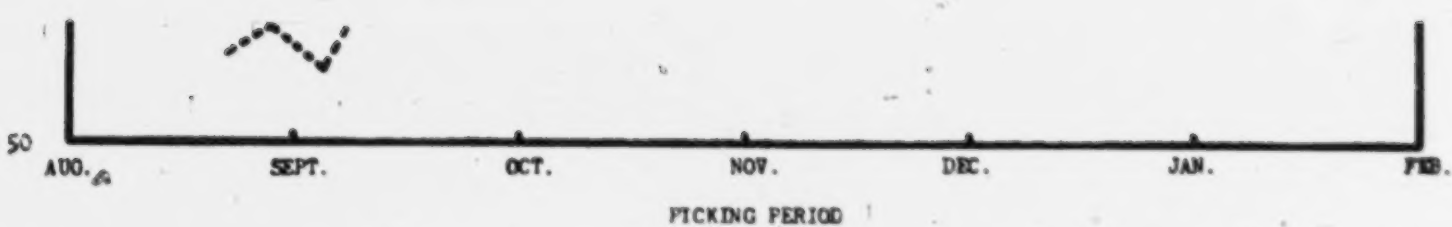


Figure 1.--The palatability of large (average weight 15 ounces) and small (average weight 12 ounces) Lula avocados at different picking periods. Results based on averages of 3 crops of fruit, 1953-54.

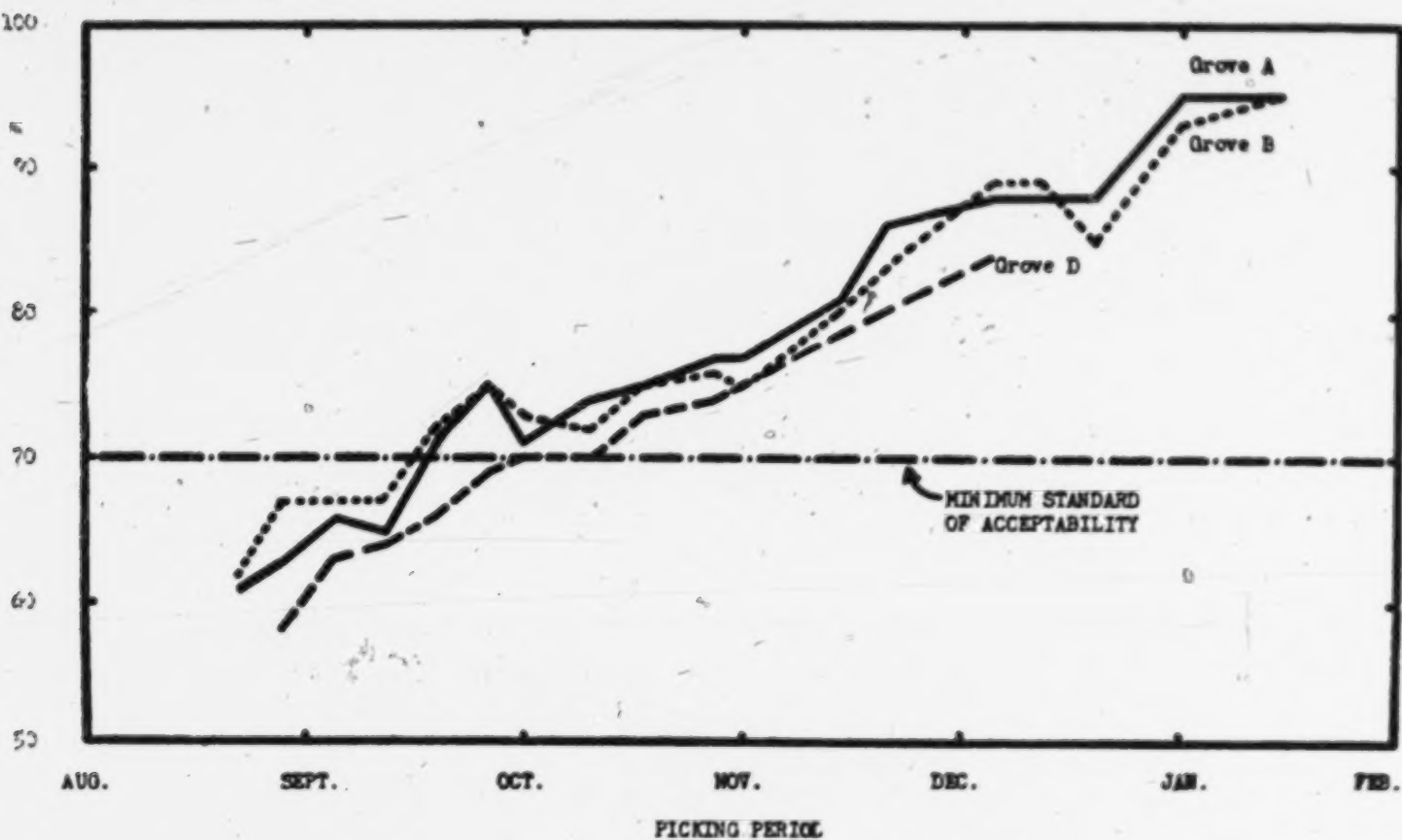


Figure 2.--Effect of crop or grove variation on the palatability of Lula avocados, 1953-54.

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Table 1. Maturity of avocados in relation to picking dates and fruit sizes, 1953-54.

Variety	Proposed picking date 1/	Proposed fruit size 1/ Ounces	Grower	Lots tested Number	Earliest picking date	Fruit size		Softening period (75° F.) 2/		Loss in weight Percent	Numerical flavor rating
						Minimum Ounces	Range Ounces	Average Days	Range Days		
Waldin	Aug. 7	16	A	6	Aug. 12	15	9-18	6	4-10	5.3	72
			B	7	Aug. 12	14	7-17	7	6-10	8.2	72
			C	2	Aug. 12	15	11-16	6	4-11	6.9	72
			J	1	Aug. 5	14	6-15	6	5-7	.5	70
			D	1	Aug. 19	16	14-17	5	3-7	4.7	75
Trapp	Aug. 15	14	D	1	Aug. 19	14	13-16	6	3-7	6.5	72
			F	1	Aug. 16	14	10-15	4	3-6	7.7	70
Pinnelli	Aug. 15	14	F	1	Sept. 16	16	13-19	4	3-4	3.3	72
Tonnage	Aug. 15	--	G	1	Aug. 15	16	14-17	6	6	5.3	75
			G	1	Aug. 15	10	9-11	7	6-7	3.1	70
Booth 8	Sept. 15	16	A	12	Sept. 16	13	6-15	6	3-8	9.3	70
			B	14	Sept. 16	12	7-12	5	4-7	8.8	70
			D	10	Sept. 22	9	7-10	5	3-9	6.5	72
Booth 1	Oct. 1	14	A	18	Sept. 16	14	9-16	5	4-5	8.1	73
			B	17	Sept. 16	16	12-17	5	4-5	6.6	73
			D	10	Sept. 29	16	9-17	5	3-5	8.8	72
Booth 7	Oct. 15	14	A	8	Sept. 29	20	14-23	6	4-7	6.5	73
			C	9	Sept. 29	17	13-17	6	4-8	6.2	70
Hickson	Oct. 15	16	A	7	Oct. 13	14	9-15	4	3-7	4.0	70
			C	5	Oct. 13	15	9-19	5	4-6	1.7	70
			H	2	Oct. 18	13	11-15	5	5-6	.7	75
Collinson	Oct. 15	12	D	2	Oct. 27	17	15-19	3	3	4.3	70
Taylor	Nov. 1	16	B	9	Nov. 10	11	9-16	5	4-5	5.2	75
			C	6	Oct. 22	13	11-15	4	4-5	3.6	70
Hall	Nov. 1	16	C	9	Nov. 10	17	14-27	6	5-6	3.8	70
			D	6	Nov. 10	28	21-30	6	5-6	4.5	75
Herman	Nov. 1	10	A	2	Nov. 11	15	13-17	5	5	4.8	80
Booth 1	Nov. 15	15	A	2	Oct. 22	14	14-20	4	4-5	3.7	70
			C	6	Oct. 22	15	14-24	4	4	2.7	70
Booth 3	Nov. 15	14	C	4	Oct. 22	19	14-23	4	3-4	1.2	78
			D	10	Oct. 22	16	14-22	4	3-4	1.2	78

Tonnage	Aug. 15	--	G	1	Aug. 15	16	11-17	6	6	2.3	12
		--	G	1	Aug. 15	10	9-11	7	6-7	3.1	70
Booth 8	Sept. 15	16	A	12	Sept. 16	13	6-15	6	3-8	9.3	70
			b	14	Sept. 16	12	7-12	5	4-7	8.8	70
			D	10	Sept. 22	9	7-10	5	3-9	6.5	72
Booth 6	Oct. 1	14	A	18	Sept. 16	14	9-16	5	4-5	8.1	73
			B	17	Sept. 16	16	12-17	5	4-5	6.6	73
			D	10	Sept. 29	16	9-17	5	3-5	8.8	72
Booth 7	Oct. 15	14	A	8	Sept. 29	20	14-23	6	4-7	6.5	73
			C	9	Sept. 29	17	13-17	6	4-8	6.2	70
Hickson	Oct. 15	16	A	7	Oct. 13	14	9-15	4	3-7	4.0	70
			C	5	Oct. 13	15	9-19	5	4-6	1.7	70
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Taylor	Nov. 1	16	B	9	Nov. 10	11	9-16	5	4-5	5.2	75
			C	6	Oct. 22	13	11-15	4	4-5	3.6	70
Hall	Nov. 1	16	C	9	Nov. 10	17	14-27	6	5-6	3.8	70
			D	6	Nov. 10	28	21-30	6	5-6	4.5	75
Herman	Nov. 1	10	A	2	Nov. 11	15	13-17	5	5	4.6	80
Booth 1	Nov. 15	15	A	2	Oct. 22	14	14-20	4	4-5	3.7	70
			C	6	Oct. 22	15	14-24	4	4	2.7	70
Booth 3	Nov. 15	14	C	4	Oct. 22	19	14-23	4	3-4	4.2	78
			D	10	Oct. 22	13	12-19	4	4-5	3.3	70
Wagner	Dec. 1	14	D	2	Dec. 16	10	9-10	5	4-5	0	72
Choquette	Jan. 1	16	I	1	Dec. 8	48	46-51	3	3-4	3.4	75

1/ Information on maturity requirements (earliest picking date and minimum size) for avocados as proposed by leaders in the industry, published by Mr. Charles H. Steffani, Dade County Agricultural Agent, Homestead, Fla., August 4, 1953.

2/ Number of days at 75°F. does not include rail transit time of 2 or 3 days from Homestead, Fla. to Orlando, Fla.

ranged from 0 to 2.4 percent. The total decay for the 200 lots averaged 1 percent.

#### SUMMARY

During the 1953-54 season some 200 different lots of avocado fruits representing 16 commercial varieties were tested for maturity and quality. Holding was at 75 degrees F., and information was obtained on number of days required for softening. Softening of fruit was fairly uniform, and the time required

for fruit to reach eating quality was 3 to 10 days and averaged 5 days. The loss in weight of fruit during the holding period averaged about 5 percent. Total decay was commercially unimportant and averaged 1 percent. Maturity of fruit within a variety could be fairly well defined on the basis of specified picking dates in conjunction with minimum weight. The stage of maturity of fruit at picking is the most important factor in palatability of avocados.

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Hickson, Taylor, Hall, Booth 1, and Booth 3. On the other hand, limited study was with Pollock, Trapp, Pinnelli, Tonnage, Collinson, Herman, Wagner, and Choquette. See Table 1.

#### Standards based on Picking dates and size of fruit

The general findings showed a close relationship between quality in fruit with definite picking dates and size. Based on the 1953-54 crop year, the proposed standards would have permitted the shipment of fairly satisfactory fruit. The results indicated no change from the proposed minimum standard for Waldin and Lula. However, size of fruit should be slightly increased for Booth 7, and slightly decreased for Booth 8, Hickson, and Taylor. The picking dates should be slightly advanced for Booth 1 and Booth 3. See figure 1.

Large sized fruit in a lot were rated higher in flavor than small sized fruit. See figures 2, 3, and 4. Small fruit often required longer periods to soften at 75°F. and were frequently unpalatable when soft. The flavor was flat, watery, slightly bitter, slightly unpleasant after taste, and texture was rubbery to soft. Palatability was associated with maturity of fruit on the tree. Late harvested fruit had better eating quality than the same variety picked early in the season.

Fruit quality was slightly affected by crop or grove variation and fruit from grove A rated higher than those from grove D (figures 5, 6, and 7).

**EVIDENCE PRESENTED AT HEARING WITH RESPECT  
TO PROPOSED MARKETING AGREEMENT OF FLORIDA  
AVOCADOS. MARCH 8, 1954 .**

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